

From: Chris Meade <Meade.Chris@epamail.epa.gov>
Sent time: 01/28/2014 11:13:18 AM
To: Szerlog, Michael; Reichgott, Christine; Curtis, Jennifer; Fauver, Becky; LaCroix, Matthew
Subject: Fw: Juneau Access: Corps' 3(c) letter attached; EPA 3(d) letter due May 21
Attachments: Permit JAIP.pdf Notice of Intent.pdf PROJECT ROD 5-5-08.pdf

----- Forwarded by Chris Meade/R10/USEPA/US on 01/28/2014 10:11 AM -----

From: Chris Meade/R10/USEPA/US
To: David Evans/DC/USEPA/US@EPA, Brian Frazer/DC/USEPA/US@EPA, Ann Campbell/DC/USEPA/US@EPA
Date: 05/06/2008 12:02 PM
Subject: Juneau Access: Corps' 3(c) letter attached; EPA 3(d) letter due May 21

-----Forwarded by Chris Meade/R10/USEPA/US on 05/06/2008 01:00PM -----

To: Chris Meade/R10/USEPA/US@EPA, Michelle Pirzadeh/R10/USEPA/US@EPA, Elin Miller/R10/USEPA/US@EPA, Richard Parkin/R10/USEPA/US@EPA, Michael Szerlog/R10/USEPA/US@EPA, Lori Cohen/R10/USEPA/US@EPA, Marcia Combes/R10/USEPA/US@EPA, Greg Kellogg/R10/USEPA/US@EPA
From: "Ross, Victor O POA" <Victor.O.Ross@usace.army.mil>
Date: 05/06/2008 12:25PM
cc: "Justis, Glen E POA" <Glen.E.Justis@usace.army.mil>, "Ross, Victor O POA" <Victor.O.Ross@usace.army.mil>, "Rabbe, Mike POA" <Mike.Rabbe@usace.army.mil>, "Stinnett-Herczeg, Terri L POA" <Terri.L.Stinnett-Herczeg@usace.army.mil>, "Leeds, John C POA" <John.C.Leeds@usace.army.mil>
Subject: Notice of Intent to Proceed Juneau Access Road must split transmittal

A hard copy went to the mail room and will go out in the mail today. This package should be the NOI cover letter, Draft permit, Draft ROD.

Victor Ross
Lead Project Manager East Branch
Regulatory Division

(See attached file: Notice of Intent.pdf)(See attached file: Permit JAIP.pdf)(See attached file: PROJECT ROD 5-5-08.pdf)

DRAFT PERMIT 5/05/2008

DEPARTMENT OF THE ARMY PERMIT

Permittee: Alaska Department of Transportation & Public Facilities

Permit No.: POA-2006-597-2, Lynn Canal

Issuing Office: U.S. Army Engineer District, Alaska

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: Permittee shall dredge, and discharge up to approximately 1,736,000 cubic yards cubic yards (cy) of dredged and fill materials into an approximate total of 110 acres of waters of the United States (U.S.), including forested wetlands, stream channels, deep-water habitat, vegetated shallows, and navigable waters of the U.S., in conjunction with the construction of a 50.8 mile long two-lane highway from the end of Glacier Highway at Echo Cove around Berners Bay and along the eastern coast of Lynn Canal to a point immediately north of the Katzeihin River delta, with associated infrastructure:

<u>Facilities</u>	<u>Acres of US Waters to be Filled</u>		<u>Fill Volume</u>	
Roadway Fill	44.40	Acres	1,173,514	Cubic Yards
Roadway Slope Stabilization	17.5	Acres	0	Cubic Yards
Channel Work	1.3	Acres	5,475	Cubic Yards
Roadway Marine fill	25.6	Acres		See below
Marine Rock Disposal	14.8	Acres	430,000	Cubic Yards
Ferry Terminal	3.8	Acres	75,600	Cubic Yards
<u>Ferry Breakwaters</u>	<u>2.7</u>	<u>Acres</u>	<u>51,000</u>	<u>Cubic Yards</u>
TOTAL	110.2	Acres	1,735,589	Cubic Yards

- Roadway Fill: Approximately 61.9 acres (44. 4 acres of roadway in freshwater wetlands plus 17.5 acres of side slope stabilization in wetlands) will have rock fill placed within the prepared site.
- Channel Work: The installation and extension of 131 of 484 culverts will require the discharge of approximately 5,475 cy of bedding, rip rap, and concrete into approximately 1.3 acres of waters of the U.S. below the ordinary high water mark of streams.
- Marine Roadway Fill: The road will be placed, for part of its length along the shoreline, in approximately 25.6 acres of marine (tidal) waters along the east side of Lynn Canal, north of Comet Beach. The road, which will be composed of shot rock fill, will be protected at its base with 6 feet of Class IV rock riprap extending up to elevation +24 feet above the 0.0 foot contour. The marine roadway fill portion was included with in the roadway fill volume.
- Marine Rock Disposal: Approximately 430,000 cy of rock shall be barged and disposed of at one of two designated open-water disposal sites in marine waters in the following locations: (A & B) Section 25, Township 33 South, Range 61, Copper River Meridian; and (C & D) Section 30, Township 32 South, Range 61 East, Copper River Meridian. The two disposal sites encompass a total of 14.8 acres.
- Ferry Terminal: The placement of approximately 75,600 cy of fill material for a marine terminal into 3.8 acres of marine waters of the U.S.

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- **Ferry Breakwaters:** The placement of approximately 51,000 cy of fill material for two breakwaters into 2.7 acres of marine waters of the U.S.
- **Terminal Facility:** Dredge approximately 40,000 cy of marine sediment from a 4.4-acre area to the minus 25-foot contour for a mooring basin. The dredged material would be used for the ferry terminal fill area and would be contained behind a six-foot thick layer of rock riprap.
- **Culverts:** The project will involve the installation of up to 445 new culverts and the extension of 19 culverts in waters of the U.S. The culverts will typically be placed in a bedding footprint of 1.5 feet on either side of the pipe, with approximately 1.5 feet of bedding below and above the pipe. Pipe alignments and gradients will match the natural stream beds except where excavation or excessive skew make this impracticable. The culverts will be installed by temporary diversion, by either pumping water around the site or by diverting the water through a temporary lined channel. .

All work will be performed in accordance with the attached plans, sheets **[1-103]**, dated February 2005, February 2006, September 2006, and May 2007.

Project Location: The project starts on the existing Glacier Highway in the SW ¼, NE ¼ of Section 18, Township 37 South, Range 64 West, Latitude 58.663344° North, Longitude 134.903281° West, in the City and Borough of Juneau, Alaska. The road shall continue north and west 50.8 miles, partially following the existing alignment of the Cascade Point Road and the Jualin Mine Access Road, and ending at the proposed ferry terminal to be located just north of the mouth of the Katzeihin River delta. The ferry terminal will be located in the NW ¼, SW ¼ of Section 33, Township 30 South, Range 60 East, Latitude 59.227191° North, Longitude 135.327309° West, in the Haines Borough, Alaska.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on **May 2013**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

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Special Conditions:

1. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.
2. You must install and maintain, at your expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number: Commander (oan), 17th Coast Guard District, P.O. Box 25517, Juneau, Alaska 99802; (907) 463-2269.
3. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
4. In-Lieu-Fee Compensatory Mitigation:
 - a. The permittee shall pay the sum of \$440,000 as In-Lieu Fee (ILF) for wetland restoration, enhancement, preservation or land acquisition for the unavoidable adverse impacts to fresh water aquatic resources. This compensatory mitigation amount of \$440,000 is based on June 2006 dollars and shall be adjusted for the rate of inflation to the year in which payment is made to the ILF operator. The method for determining inflation shall be the same as those used by FHWA to determine project costs.
 - b. The permittee shall pay the sum of \$780,000 as an ILF to offset for the loss of 32.0 acres of unavoidable adverse impacts to intertidal and subtidal marine waters (EFH) of the United States. The \$780,000 is compensatory mitigation required under Section 404 of the Clean Water Act. This compensatory mitigation amount of \$780,000 is based on June 2006 dollars and shall be adjusted for the rate of inflation to the year in which payment is made. The method for determining inflation shall be the same as those used by FHWA to determine project costs.
 - c. Therefore, the total ILF amount required under Section 404 of the Clean Water Act for the Project is found in two parts: (4a: \$440,000) + (4b: \$780,000) = \$1,220,000.
 - d. Total payment to the ILF operator shall be made for special condition 4a prior to any construction. Construction is defined as ground breaking or land clearing activity with heavy equipment, the placement of fill material in waters of the U.S. or work within waters of the U.S.
 - e. Payment or fund expenditures for special condition 4b shall be made in accordance with the Essential Fish Habitat mitigation plan, found in the document, *"Mitigation Commitments Relevant to Section 404 of the Clean Water Act."*
 - f. If project modifications result in a footprint increase in low-value fresh water jurisdictional wetlands, and the footprint increase is less than five acres, an ILF increase is not required. If the jurisdictional low-value wetland fill footprint exceeds 66.9 acres (61.9 + 5.0 = 66.9 acres) for the project, the amount of additional mitigation shall be determined independently, and shall be in addition to the amount in special condition 4a (\$440,000).
 - g. If project modifications result in a footprint increase impacting marine or high-value jurisdictional habitat areas, the amount of additional mitigation shall be determined independently, and shall be in addition to the amount in special condition 4b (\$780,000).
 - h. If project modifications are requested by ADOT an approved DA permit shall be in hand prior to placing fill or structures in jurisdictional waters of the U.S. A permit modification is required if the plans vary from those permitted by the DA. Special Conditions 4a through 4g address mitigation requirements not DA permit requirements.

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5. All anadromous fish streams will be crossed by bridges. Streams that can be crossed with 130-foot or shorter bridges will not have any structures or fill placed below the ordinary high water mark of the stream channel.
6. Permittee shall coordinate with the U.S. Fish & Wildlife Service (USFWS) to avoid impacts on eagle nesting trees, in accordance with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Permittee shall also abide by the National Bald Eagle Management Guidelines at <http://www.fws.gov/migratorybirds/baldeagle.htm>.
7. No in-water work is permitted between April 15 and June 15 in anadromous waters. Marine water work can only occur if there is a complete tide out event during this window.
8. No fill material shall be side cast into Berners Bay during construction.
9. The Measures to Minimize Harm identified in the April 3, 2006, Federal Highway Administration's Record of Decision for the Project shall be incorporated as elements of the project. If there is any conflict between FHWA's Measures to Minimize Harm and conditions of DA permit, the conditions of the DA permit shall be controlling.
10. The permittee will continue to fund the U.S. Fish & Wildlife Service's aerial surveys for a period of five years after all construction is completed to assess the impact, if any, of the project on the Lynn Canal bald eagle population.
11. Permittee shall construct the proposed bridges for the Antler and Lace Rivers so as to avoid placing fill material in any contiguous wetlands.
12. For project segments not yet fully designed, the permittee shall submit to the Corps, for review and approval, detailed plan sheets that reflect the contract plans and specifications for all work involving fill placement in waters of the United States, including wetlands. The submission shall be at least 30 days prior to contract advertisement and at least 90 days prior to initiation of construction, whichever provides a greater review period. "Construction," as used here, is defined as groundbreaking or land-clearing activity with heavy equipment, or the placement of fill material within 50 feet of waters of the United States. Plans sheets and any accompanying specifications shall delineate all fill footprints in waters of the U. S., including wetlands and provide site-specific details on the fill quantities, fill footprints and construction methods (e.g. culvert installation in streams for road crossings) in sufficient detail for permit compliance inspections by the Corps. The permittee shall demonstrate how the Department of the Army permit conditions and authorization has been incorporated into the plans and specifications. Submittals from the applicant, and or approvals from the Corps may be completed in multiple phases.
13. The permittee shall notify the Corps, in writing, at least 30 days prior to the proposed construction of any offsite disposal areas associated with this project and shall submit a preliminary jurisdictional determination to the Corps for verification no waters of the U.S., including wetlands are involved. Construction of the new waste sites shall not commence until the Corps has determined in writing, that the disposal sites and methods of disposal do not require additional Corps authorization.
14. The permittee shall delineate by staking, flagging and/or marking with other observable methods the construction area limits prior to commencing construction in each area. The permittee shall notify the Corps, in writing, a minimum of 14 days before construction in each area, of the date when staking of that area will be available for Corps inspection. The permittee shall arrange for an inspection of the delineated limits with the Corps. The delineated limits shall be maintained throughout construction to prevent equipment encroachment and/or fill material placement beyond the project-authorized footprint.
15. A pre-construction meeting shall be held between the permittee, the Corps, and the prime contractor(s) whose work is subject to this permit, at least 14 days prior to construction activities, placement of fill material, in waters of the U. S., including wetlands. A minimum notice of a ten working days shall be provided to the Corps. The purpose of the meeting shall be to discuss the work authorized under this permit and the environmental mitigation measures required for compliance, in addition to serving as a forum for open discussion on the above, to identify problem areas, and to answer questions that attendees may have. The permittee shall insure that all contractors and workers whose work is subject to this permit are advised of its terms and conditions. All contractors whose work is subject to this permit shall be given a copy of this permit and required to keep a copy on-site.

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16. Construction activities in wetland areas shall be kept to a minimum and shall not exceed the clearing limits. Vehicles traversing wetlands shall be confined to the minimum corridor necessary to conduct the work. Heavy equipment operating in wetlands outside the fill footprint shall be operated on mats of sufficient size and material(s) to minimize soil disturbances, and to allow complete removal of the mats without further soil disturbances after construction.

17. 'Certified' seed mixtures shall be used where seeding is required for erosion control and/or revegetation. Seed collection may be made from the surrounding or regional area for revegetation purposes but not for short-term erosion control purposes. The purpose of the use of certified seed mixtures is to ensure that a high standard of pure live seed is utilized, and to avoid or minimize the contamination of the seed mixture with noxious weed and/or weed seed.

18. All road cut and fill areas, and waste material disposal sites shall be limited to the minimum required to complete the work and shall be properly stabilized concurrently with material placement to prevent sediment-laden runoff from entering natural surface waters.

19. The permittee shall implement and maintain effective erosion and sediment control measures before, during, and after construction. Filled wetland areas shall be aggressively monitored and maintained to prevent erosion and sediment from entering water bodies.

20. All filled areas in stream corridors shall be treated for revegetation within 30 days of completion of road-stream crossings and within the growing season in which the construction occurs. If construction of a stream crossing is completed after the growing season, the disturbed stream banks shall be stabilized by other means for the winter and revegetation treatments shall occur at the beginning of the following growing season. At the end of one full growing season, live vegetative cover shall be equal to or greater than 25 percent of the surrounding undisturbed live vegetative cover density and 75 percent after three years.

21. Natural wetland drainage and inundation patterns shall be maintained through the incorporation of adequately sized (diameter and length), sloped and spaced culverts and/or bridges. The permittee shall be responsible for annual monitoring, maintenance, and/or repair, and/or replacement of all culverts and bridges for the life of the project to insure that natural wetland drainages and inundation patterns are maintained. Upslope ponding shall be considered an indicator of non-compliance with this condition.

22. All culverts and bridges shall be designed, installed, and maintained so they do not interfere with free and unobstructed passage of all life stages of fish (both anadromous and resident) present in the stream under reasonably expected flow levels. In addition, the culverts shall be placed in and aligned with the natural stream channel and hydraulic gradient.

23. Gravel and streambed material shall be used in the bottoms of fish-passage culverts.

24. Temporary fills in wetlands shall be placed on geotextile mats or other suitable materials of sufficient thickness to facilitate the removal of the fill material to the maximum extent practicable when it is no longer needed for construction. No natural earthen material shall be removed from under the geotextile mat when the temporary fill is removed.

25. All construction in anadromous fish streams shall take place when stream disturbances would have the least impact on anadromous fish species. All in-water anadromous fish stream construction activities shall be coordinated with the Alaska Department of Natural Resources, Habitat Division. Construction work that occurs above the ordinary high water mark area of the stream and does not include in-water construction may be conducted throughout the year.

26. In-water work areas, except for stream crossings by construction equipment and pile driving, shall be isolated from flowing waters in all fish bearing streams.

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27. Permittee shall work with the communities of Juneau, Haines, and Skagway to develop, to the extent practicable, a beneficial use for the estimated 0.4 million cy of waste rock that would otherwise be discharged into marine waters. The permittee's "Beneficial Use Evaluation" shall include, but is not limited to, the construction of artificial reef habitat in Lynn Canal.

28. During pile driving activities in the Lynn Canal, the Chilkoot Inlet and Berners Bay, a vibratory hammer and/or a reverse rotary drill shall be used to the extent practicable. If impact hammers are needed to drive steel piles, NMFS shall first be provided with a description of why vibratory hammers cannot be used. Driving near-shore pilings shall occur only during periods of low tides when the site is dewatered.

29. Riprap shall be placed along stream banks as necessary to maintain stream bank integrity, and shall in fish bearing streams include the use of bioengineering techniques to improve habitat value of the riprap, such as incorporation of willow stakes or other locally available vegetation.

30. A copy of an as-built survey shall be provided to the Corps for all fills (roads, pads, etc) placed in waters of the U.S., including wetlands, as well as culverts and bridges over freshwater streams each year after implementation of the work authorized by this permit, and upon completion of the project, a final as-built survey shall be submitted within one year, or within one month from the date of surveys required for other Federal or state offices, whichever is earlier.

31. All conditions and agreements found in the National Marine Fisheries Service September 27, 2005, Endangered Species Act Section 7 consultation letter shall be followed by ADOT and its contractors.

32. The applicant shall supply a yearly update to the Corps of Engineers on mitigation work completed and in lieu payments made according to the *Essential Fish Habitat mitigation plan, found in the document "Mitigation Commitments Relevant to Section 404 of the Clean Water Act."*

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

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- d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a revaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE) AND TITLE (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

FOR (DISTRICT COMMANDER) COL KEVIN J. WILSON (DATE)
RANDOLPH M. RABBE, CHIEF
REGULATORY DIVISION

When the structures or work authorized by this permit are still in existence at the time the property is transferred the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions have the transferee sign and date below.

(TRANSFeree) (DATE)



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
P.O. BOX 6898
ELMENDORF AFB, ALASKA 99506-0898

District Commander

MAY 06 2008

Ms. Elin D. Miller
Regional Administrator
U.S. EPA, Region 10
1200 Sixth Avenue Suite 900
Seattle, Washington 98101

Dear Ms. Miller:

This letter constitutes my **Notice of Intent to Proceed** with Department of the Army (DA) authorization of the Alaska Department of Transportation and Public Facilities (ADOT) proposed Juneau Access Improvements Project between Echo Cove and the proposed Katzeihin Marine Terminal, Alaska; file number POA-2006-597-2 under the authorities of Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

In accordance with the Memorandum of Agreement (MOA) between the DA and the U.S. Protection Agency (EPA), Part IV.3.(c)(1), regarding §404(q) of the Clean Water Act, and in response to your, 3(b) letter, I am informing you of my intent to proceed on the authorization to the ADOT. The DA permit authorization would include 32 special conditions. I have reached this decision after fully considering the comments submitted by your agency and other interested parties. A copy of the draft permit and the draft Record of Decision are enclosed. Please recognize that some minor modifications may be made to these drafts.

In accordance with the MOA, I will proceed with issuance of the permit 15 days from the date of receipt of this letter, unless you notify me in writing that you have forwarded this issue to EPA HQ with a recommendation to request review by the Assistant Secretary of the Army for Civil Works.

If you have any specific concerns or questions concerning this notice, or wish to discuss any potential solutions to mutually resolve this at the local level, please contact me directly at (907) 753-2504. If any members of your staff desire further information, please feel free to have them contact Mr. Victor Ross of my Regulatory Division at (907) 753-2712.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. Wilson", is written over a horizontal line.

Kevin J. Wilson
Colonel, Corps of Engineers
District Commander

Enclosures



Alaska District

DEPARTMENT OF THE ARMY

RECORD OF DECISION & PERMIT EVALUATION

APPLICANT: ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES
APPLICATION NO.: POA-2006-597-2
WATERWAY: LYNN CANAL & THE BERNERS BAY WATERSHED

This document constitutes the United States (U.S.) Department of the Army, Corps of Engineers' (Corps) Record of Decision (ROD), compliance determination according to the National Environmental Policy Act (NEPA), the U.S. Environmental Protection Agency's (EPA) Section 404(b)(1) Guidelines¹ (Guidelines), and the public interest review for the Alaska Department of Transportation and Public Facilities' (ADOT) proposed Juneau Access Improvements Project (Project).

The ADOT and the Corps initiated the NEPA process to "...satisfy the requirements of the Act which requires preparation of an Environmental Impact Statement (EIS) for any proposed project that: is not categorically excluded; is a major federal action (i.e., requires a permit, regulatory decision, or funding from a federal agency); may have a significant effect on the quality of the human environment".² The NEPA document was used to identify and analyze alternatives to all Federal Projects and in this circumstance Federal Project #STP000S (131) [State Project #71100]. The Federal Highway Administration (FHWA) was the lead Federal agency for the project, while ADOT acted on behalf of FHWA in preparing the EIS. The Corps has been a cooperating agency throughout the NEPA process, which was completed on January 1, 2006, when the Final EIS (FEIS) was published³. The FHWA Division Administrator, David Miller, signed and issued the FHWA ROD on April 3, 2006. The ADOT and the FHWA selected Alternative 2B as their preferred alternative.

The FEIS adequately analyzed the impacts of the proposed action. The time between the FEIS and the Corps ROD has resulted in higher construction costs for all alternatives. The increasing costs of steel, concrete, fuel, and construction equipment will elevate the final construction costs. Inflation will raise the costs of construction, operation, and maintenance for all of the alternatives. The current FEIS analyzed the full range of impacts from the alternatives. We agreed with EPA's suggestion, and revised the analysis of Alternative 3 to develop a Modified Alternative 3 to satisfy Endangered Species Act concerns. The Corps applied wetland avoidance and minimization to Alternative 2B, which resulted in what we have called Modified Alternative 2B in this ROD. The impacts from the revised alternatives were adequately

¹ 40 CFR 230

² FEIS, Summary, page S-1.

³ A copy of the FEIS can be found on the internet at
http://dot.alaska.gov/stwdplng/projectinfo/ser/juneau_access/index.shtml

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addressed within the impact analysis in the EIS. There are no substantial changes to the proposed action and there are no significantly new circumstances or information relevant to environmental concerns bearing on the proposed action or its impacts.

The evaluation in the FEIS for Alternative 2B determined that 253 acres of waters of the U.S. would be filled. It was found during the development of this ROD that Modified Alternative 2B would fill 110 acres of waters of the U.S. This reduction in fill was negotiated with ADOT using information presented in the FEIS. Therefore, further NEPA evaluation is not warranted.

I have independently reviewed and evaluated the information in the FEIS, in accordance with 40 CFR 1506.3 and 33 CFR 230.21. The Corps hereby adopts the FEIS for the Project, except for the conclusions made in the draft 404(b)(1) analysis found in Appendix X of the FEIS. The Corps in this document completed its own independent 404(b)(1) analysis. The Corps used information found in Appendix X, but is not basing a Department of Army (DA) permit decision on the conclusions found in Appendix X. The Corps has an independent responsibility to analyze the environmental impacts of a project and determine its compliance with the Guidelines. The Corps often asks that an applicant prepare a draft guideline analysis. The Corps' intent has been to have the applicant understand that there is a fundamental difference between the NEPA preferred alternative selection process and the Guidelines' requirements. Section 404 of the Clean Water Act (CWA) applies to the discharge of dredged or fill material into waters of the United States. The substantive evaluation requirements of Guidelines developed by the Administrator of the EPA in conjunction with the Secretary of the Army are published in Section 40, Code of Federal Regulations (CFR) Part 230, "Guidelines for Specification of Disposal Sites for Dredged or Fill Material".

The adequacy of the FEIS is the subject of a judicial action which is still pending. That case is Southeast Alaska Conservation Center et. al. v. Federal Highway Administration et. al., No. 1:06-cv-00009-JWS (D. Alaska).

I. DECISION: I have decided, in light of the overall public interest, to issue a DA permit, for Alternative 2B, as modified by the application of avoidance and minimization, pursuant to Section 404 of CWA (33 U.S.C. 1344) (10/404 permit) and Section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. 403). The permit will be issued to the ADOT and authorize the discharge of fill material into waters of the U.S. to construct an overland road between Echo Cove and an area just north of the Katzehin River delta and will contain the following language:

"Discharge up to 1,736,000 cubic yards (cy) of dredged and fill material into approximately 110 acres of waters of the United States, including forested wetlands, stream channels, deep-water habitat, vegetated shallows, and navigable waters, in conjunction with the construction of a 50.8-mile long two-lane highway from the end of Glacier Highway at Echo Cove around Berners Bay and along the eastern coast of Lynn Canal to a point immediately north of the Katzehin River delta, with associated infrastructure:

Facilities	Acres of US Waters To Be Filled	Fill Volume
Roadway Fill	44.4 Acres	1,173,514 cy

Roadway Slope Stabilization	17.5 Acres	0 cy
Channel Work	1.3 Acres	5,475 cy
Marine Roadway Fill	25.6 Acres	'see below'
Marine Rock Disposal	14.8 Acres	430,000 cy
Ferry Terminal	3.8 Acres	75,600 cy
<u>Ferry Breakwaters</u>	<u>2.7 Acres</u>	<u>51,000 cy</u>
TOTAL	110.1 Acres	1,735,589 cy

The individual components of the work shall include, but are not limited to, the following activities:

Roadway Fill: Approximately 61.9 acres (44.4 acres of roadway in freshwater wetlands plus 17.5 acres of side slope stabilization in wetlands) will have rock fill placed within the prepared site.

Channel Work: The installation and extension of culverts will require the discharge of bedding material, riprap, and concrete into 1.3 acres of waters of the U.S. below the ordinary high water mark of streams.

Marine Roadway Fill: The road will be placed, for part of its length along the shoreline, in approximately 25.6 acres of marine (tidal) waters along the east side of Lynn Canal, north of Comet Beach. The road, which will be composed of shot rock fill, will be protected at its base with 6 feet of Class IV rock riprap extending up to elevation +24 feet above the 0.0 foot contour. The marine roadway fill portion was included with in the roadway fill volume.

Marine Rock Disposal: Approximately 430,000 cy of rock shall be barged and disposed of at one of two designated open-water disposal sites in marine waters in the following locations: (A & B) Section 25, Township 33 South, Range 61, Copper River Meridian; and (C & D) Section 30, Township 32 South, Range 61 East, Copper River Meridian. The two disposal sites encompass a total of 14.8 acres.

Ferry Terminal: The placement of approximately 75,600 cy of fill material for a marine terminal into 3.8 acres of marine waters of the U.S.

Ferry Breakwaters: The placement of approximately 51,000 cy of fill material for two breakwaters into 2.7 acres of marine waters of the U.S.

Terminal Facility: Dredge approximately 40,000 cy of marine sediment from a 4.4-acre area to the minus 25-foot contour for a mooring basin. The dredged material would be used for the ferry terminal fill area and would be contained behind a six-foot thick layer of rock riprap.

The Corps' ROD is based upon information contained in the FEIS and the stated views and comments of Federal, State, local agencies, the interested public, current national policy and applicable laws and regulations. The possible consequences of all alternatives, have been evaluated in terms of environmental effects, and the public interest, pursuant to 33 CFR 320.4. All factors⁴ which may be relevant to my decision were considered, including

⁴ These and other factors were addressed in the DEIS and FEIS, Chapter 3.0 (Affected Environment) and Chapter 4 (Environmental Consequences of the Alternatives), which adequately addressed the environmental and public interest factors. No new factors have been identified as a result of this review.

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the cumulative effects. These factors included, but were not limited to conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, mineral needs, consideration of property ownership, and in general, the needs and welfare of the people.

II. APPLICANT'S PROPOSED PROJECT: The Department of Army permit application for the proposed road was submitted to the Corps on March 3, 2006, and determined to be complete on April 20, 2006. The location and description of the project was described in the Corps' public notice, dated April 21, 2006, with an expiration date of May 22, 2006 for a total review time of 52 days. ADOT proposed constructing Alternative 2B from the FEIS in their Department of Army (DA) permit application dated March 3, 2006, to discharge approximately 2,942,900 cy of dredged and fill material into approximately 253 acres of waters of the U.S. including forested wetlands, stream channels, deep-water habitat, vegetated shallows, and navigable waters, in conjunction with the construction of a new roadway (50.8-miles long), a ferry terminal, and the associated infrastructure.

The applicant's stated purpose in their DA permit application, was "...to provide improved surface transportation to and from Juneau within the Lynn Canal corridor that will provide the capacity to meet the transportation demand in the corridor, provide flexibility and improve opportunity⁵ for travel, reduce travel time between the Lynn Canal communities, reduce state costs for transportation in the corridor, reduce user costs for transportation in the corridor."⁶

III. OVERALL PROJECT PURPOSE: Where the activity associated with the placement of fill material in a special aquatic site (in this instance wetlands) does not require access or proximity to or siting within the wetland in order to fulfill its basic purpose (e.g. the activity is not water dependent) the Guidelines pose two rebuttable presumptions: 1) practicable alternatives not involving wetlands are presumed to be available, and 2) practicable alternatives not involving discharges to wetlands are presumed to have less adverse impact on the aquatic ecosystem. For non-water dependent projects it is the applicant's responsibility to clearly and convincingly rebut these two presumptions.

Failure to rebut the presumptions or otherwise fail to demonstrate compliance with the Guidelines would require permit denial, regardless of a lead federal agency's selection of a preferred alternative through the NEPA process. Stated another way, if the permit application for the preferred alternative is denied by the Corps of Engineers, that alternative (preferred or not) shall not be built. This underscores the critical distinctions that follow with regard to issues such as: purpose and need (for NEPA) versus overall project purpose (for the Guidelines); or preferred alternative (for NEPA) versus Least Environmentally Damaging Practicable Alternative (LEDPA) (for the Guidelines).

⁵ The Corps is using the ADOT definition of 'flexibility and opportunity' which was in terms of numbers of round-trips per day from Juneau to Haines and Skagway. See FEIS, Technical Appendix A (Alternative Screening), page 9, Element 2.

⁶ Purpose elements defined in FEIS, Section 1 (Purpose and Need).

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The definition of overall project purpose is used in the determination of practicable alternatives since the Guidelines define practicable to mean: "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purposes" [40 CFR 230.10(a)(2)]. While the definition of overall project purpose is solely the Corps' responsibility, it must take into consideration the applicant's stated purpose for the project (October 15, 1999, Army Corps of Engineers Standard Operating Procedures for the Regulatory Program). It cannot be so restrictive that the applicant's proposal is the only possible alternative or so broad that it makes the search for alternatives meaningless.

After considering the applicant's stated project purpose and need we have defined the overall project purpose as:

"To provide improved surface transportation with increased capacity to meet demand, provide flexibility, improved opportunity for travel, and reduced travel time between the Lynn Canal communities of Juneau, Haines, and Skagway."

The Corps will not include the cost components used by ADOT in their purpose and need statement. To include the cost components, "reduce state costs for transportation in the corridor, and reduce user costs for transportation in the corridor," would narrowly restrict the Section 404 alternatives analysis to just one alternative, the preferred alternative. For a period of time during our review, "capacity to meet demand" was dropped from the overall project purpose definition because we felt it was clearly implied. However, for clarification purposes and to make certain there were no misunderstandings, we have added "capacity to meet demand" into the Corps' overall project purpose.

IV. SCOPE OF ANALYSIS [33 CFR 325, Appendix B, 7(b)]: The scope of analysis for this Project includes review of the direct, secondary, cumulative, and reasonably foreseeable impacts of the Project, within the Corps control and responsibility, as well as alternatives carried forward for analysis. Project-related impacts not within the Corps control and responsibility were summarized and identified in the secondary and cumulative impact sections of the FEIS.⁷

V. BACKGROUND: A DEIS for the Juneau Access Improvement Project was published in June 1997. The project was subsequently reevaluated in December 2002, wherein a determination was made that substantial changes in the project and documentation were warranted. A Supplemental Draft Environmental Impact Statement (SDEIS) was released to the public in January 2005. The preferred alternative identified in the SDEIS would have constructed a highway all the way into Skagway from the current end of the Glacier Highway at Echo Cove, 40 miles in a (straight-line distance) northwest of Juneau.

The FEIS was published in January 2006. The preferred alternative, Alternative 2B, the East Lynn Canal Highway, extended from Echo Cove to a proposed ferry terminal at the Katzeihin River delta. The road was shortened (from the SDEIS to the FEIS) by terminating the road at the Katzeihin River delta (not proceeding to Skagway); and proposing ferry service between Haines and the Katzeihin delta. This change was due to concerns on how the road to

⁷ See FEIS, Section 4.9.3, Summary of Cumulative Impacts.

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Skagway would affect the Klondike Gold Rush National Historical Park and the surrounding Section 4(f)⁸ lands.

The FEIS, dated January 2006, summed up the situation by stating in Section 6⁹, that "The SDEIS indicated that a determination of the applicability of Section 4(f) to the natural land that would be crossed by these alternatives¹⁰ would be made at the conclusion of consultation with the National Park Service (NPS) and the SHPO (State Historic Preservation Officer)." In the following paragraph it was stated, "Based on this language, the NPS position on its [FHWA] meaning, and existing FHWA guidance, FHWA has determined that natural areas within the NHL are protected by Section 4(f). Consequently, Alternatives 2, 2A, and 2C have been dropped from the range of reasonable alternatives, based on the original screening criteria."

The ADOT and the FHWA, as a follow-up to their alternative selection process, and after submittal of the Corps permit application to the Corps, negotiated with the United States Forest Service (USFS) to obtain access to the USFS' lands running from vicinity of the Echo Cove area northward toward Skagway. This 'follow-up' action resulted in a Memorandum of Understanding (MOU) between the ADOT, the FHWA, and the USFS: "The purpose of this MOU is to establish a framework and process for granting the reciprocal rights-of-way and easements described in Section 4407 of Public Law 109-59 ("Section 4407"), which provides as follows: "Notwithstanding any other provision of law, the reciprocal rights-of-way and easements identified on the map numbered 92337 and dated June 15, 2005, are hereby enacted into law."¹¹ Shortly after the MOU was signed, the USFS granted the ADOT a right-of-way easement¹² allowing the ADOT's proposed road to traverse the Tongass National Forest, beginning from just north of Echo Cove northward to the edge of the boundary of the Tongass National Forest, ending approximately one mile southwest of Dewey Lake, southeast of Skagway, and approximately 2.2 miles from entering the City of Skagway.

VI. ALTERNATIVES CONSIDERED:

A. Alternatives for the Road Alignment with and without a Ferry System.

Alternatives considered in the 1997 Draft EIS: Alternatives considered in the 1997 Draft EIS included a No Action Alternative, a highway, and four variations of an all-marine route. These are briefly described below, and are discussed in detail in the 1997 Draft EIS [Section 3, Alternatives Advanced]. Each alternative mentioned below, except for the Shuttle Service from the Auke Bay Alternative, would require extending the highway to Sawmill Cove, just north of Echo Cove, in Berners Bay.

No Action Alternative: This action would continue the existing Alaska Marine Highway System (AMHS) mainline ferry service in Lynn Canal. For the Corps a No Action Alternative typically means a no build alternative. This No Action Alternative may lead to a decline in existing ferry service, and a change in ferry schedules, which are not subject to DA authorization.

⁸ Hereinafter referred to as 4F in reference to Section 4F of the Department of Transportation Act.

⁹ FEIS, Section 6, Section 4F, pages 6-4 and 6-5.

¹⁰ Alternatives 2, 2A, and 2C, from the DEIS.

¹¹ MOU between the USFS and the ADOT and the ADNR, dated September 22, 2006.

¹² Section 407 of Public Law 109-59, D-1 Easement, dated November 22, 2006. A copy of this easement is available for viewing at the Borough's Recorder, in the City & Borough of Juneau, Alaska.

Highway Alternative: This action would have replaced the mainline ferry system service between Juneau, Haines, and Skagway. A ferry terminal with breakwater would have been located at the north end of the Katzeihin River delta, and the existing terminal in Haines would be modified to accommodate end-loading ferries. [This alternative is the same as Alternative 2B of the 2006 FEIS.]

Marine Alternatives: Each of the following four alternatives would have continued to provide service from Juneau to Haines and Skagway, by either augmenting, or replacing the existing AMHS mainline ferry service, with a high-speed shuttle ferry.¹³ Also, the existing ferry terminals in Auke Bay, Haines, and Skagway would each require some modification to accommodate end-loading ferries. These alternatives as described in the DEIS were replaced by Alternatives 4A through 4D, respectively, in the 2006 FEIS.

Shuttle Service from Auke Bay: The high speed shuttle would provide three roundtrips per day from Auke Bay to Haines and two to Skagway from Haines and would be supplemented with the AMHS mainline ferry. This alternative is similar to Alternative 4A of the 2006 FEIS except that alternative would include the purchase of two fast catamaran ferries for summer service along with summer and winter mainline service.

Shuttle Service from Berners Bay: This would include one supplemental shuttle ferry from a new Berners Bay ferry terminal during the summer season and from the Auke Bay terminal during the winter season along with AMHS mainline ferry service from Auke Bay. This alternative is similar to Alternative 4B of the 2006 FEIS except that that alternative would require the purchase of two fast catamaran ferries for summer service from Berners Bay and winter service from Auke Bay along with year-round mainline service from Auke Bay.

Shuttle Service North from Auke Bay: The AMHS mainline ferry service north of Auke Bay would be discontinued, but service to Haines and Skagway would continue via the fast ferries. This alternative is similar to Alternative 4C of the 2006 FEIS except mainline service would be replaced with two conventional monohull shuttle ferries from Auke Bay.

Shuttle Service North from Berners Bay: The Auke Bay ferry terminal would be the northernmost terminus for AMHS mainline ferries. Service to Haines and Skagway would be provided by two high speed shuttle ferries from a new Berners Bay terminal. This alternative is similar to Alternative 4D of the 2006 FEIS except mainline service would be replaced with two conventional monohull shuttle ferries from Berners Bay.

Alternatives considered in the 2006 Final EIS: The No Action Alternative as well as Alternatives 2B, 3, 4A, 4B, 4C and 4D, which are briefly described below, was discussed in detail in the 2006 FEIS. Also, see the Summary Table in Section VIII of this ROD.

¹³ Eighty-four foot INCAT wave piercing catamaran, which cruises up to 29 miles per hour (mph) with a top speed of 42 mph, and has a capacity of 105 vehicles and 777 passengers.

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No Action Alternative¹⁴: "The No Action Alternative is a reduction below the current level of service due to reduced mainliner frequency in Lynn Canal. Mainliner frequency would be reduced because of projected reduction in the number of mainliners operating in the AMHS." "Current AMHS planning is for the *M/V Aurora* to begin Haines/Skagway service in 2007."

All Fill in Waters of the U.S. = 0.0 acres

Alternative 2B: East Lynn Canal Highway to Katzeihin, Shuttles to Haines and Skagway: This alternative would result in the construction of "...a 50.8-mile long two-lane highway from the end of Glacier Highway at Echo Cove around Berners Bay and along the coast of Lynn Canal to a point north of the Katzeihin River delta. The Haines to Skagway shuttle service would continue to operate, with two new shuttle ferries and the *M/V Aurora* forming a three-vessel system connecting Katzeihin, Haines, and Skagway. AMHS mainline ferry service would end at Auke Bay and the *M/V Fairweather* would no longer operate in Lynn Canal." The numbers below correspond to the Corps' public notice of the DA permit application which was based on the FEIS alternative.

Roadway Fill in Wetlands	=	55.2 Acres ¹⁵
Roadway Slope Stabilization	=	14.7 Acres ¹⁶
Stream Channel Work	=	1.4 Acres
Roadway Fill in Marine Waters	=	25.6 Acres
Marine Rock Disposal	=	150.0 Acres
Ferry Terminal	=	3.8 Acres
Ferry Breakwaters	=	2.7 Acres
Total Waters of U.S. Filled	=	253.4 Acres
Permanent Loss of U.S. Waters	=	103.4 Acres ¹⁷

Alternative 3: West Lynn Canal Highway: This alternative would extend Glacier Highway 5.2 miles from Echo Cove to Sawmill Cove. New ferry terminals would be constructed at Sawmill Cove and at William Henry Bay. Shuttle ferries would transit (each way) between William Henry Bay and Sawmill Cove. A 38.9-mile highway would be constructed from William Henry Bay northward to Haines. The *M/V Aurora* would continue to operate as a shuttle between Haines and Skagway.

Maximum Wetlands Filled	=	26.4 Acres
Maximum Marine Waters Filled	=	11.6 Acres
Total Other Waters U.S. Filled	=	<2.0 Acres
Total Waters of U.S. Filled	=	<40.0 Acres
Permanent Loss of U.S. Waters	=	<40.0 Acres

Alternative 4A: Fast Vehicle Ferry (FVF) Shuttle Service from Auke Bay. Included the operation of two FVF from Auke Bay to Haines and Skagway. AMHS mainline ferry service would continue in Lynn Canal and the Haines/Skagway shuttle (*M/V Aurora*) would continue to operate. No new ferry terminals would be constructed.

¹⁴ FEIS, Section 2.3.1 Alternative 1 - No Action.

¹⁵ Road fill is within the roadway in wetlands (not slope stabilization).

¹⁶ Slope stabilization includes fill in wetlands on cut slopes.

¹⁷ Permanent loss is determined by taking (Acres of Total Waters U.S. Filled) minus (Acres of Marine Rock Disposal). Marine waste rock will be submerged and will be recolonized by aquatic species, provide habitat, therefore, it will not be calculated as a permanent loss.

Maximum Wetlands Filled	= 0.0 Acres
Maximum Marine Waters Filled	= <1.0 Acres
Total Waters of U.S. Filled	= <1.0 Acres
Permanent Loss of U.S. Waters	= <1.0 Acres

Alternative 4B: FVF Shuttle Service from Berners Bay. Glacier Highway would be extended 5.2 miles from Echo Cove to Sawmill Cove with a new ferry terminal at Sawmill Cove. Two FVF would provide daily service from Sawmill Cove to Haines and to Skagway in the summer and from Auke Bay to Haines and Skagway in the winter. AMHS mainline ferry service would continue between Auke Bay, Haines, and Skagway. The Haines/Skogway shuttle would continue to operate.

Maximum Wetlands Filled	= 1.9 Acres
Maximum Marine Waters Filled	= <2.9 Acres
Total Other U.S. Waters Filled	= 0.2 Acres
Total Waters of U.S. Filled	= <5.0 Acres
Permanent Loss of U.S. Waters	= <5.0 Acres

Alternative 4C: Conventional Monohull Shuttle Service from Auke Bay. Two conventional monohull shuttle ferries would provide daily summer service from Auke Bay to Haines and Skagway. A single shuttle would alternate between running one day to Haines and one day to Skagway. AMHS mainline ferry service would be provided from Auke Bay twice a week year-round to Haines. The Haines/Skogway shuttle would continue to operate. No new ferry terminals would be constructed.

Maximum Wetlands Filled	= 0.0 Acres
Maximum Marine Waters Filled	= <1.0 Acres
Total Other Waters U.S. Filled	= <1.0 Acres
Total Waters of U.S. Filled	= <1.0 Acres
Permanent Loss of U.S. Waters	= <1.0 Acres

Alternative 4D: Conventional Monohull Shuttle Service from Berners Bay. Glacier Highway would be extended 5.2 miles from Echo Cove to a new Sawmill Cove ferry terminal. Two conventional monohull ferry shuttles would provide service from Sawmill Cove to Haines and Skagway in the summer and alternating day service to Haines and Skagway in the winter. AMHS mainline ferry service from Auke Bay to Haines would continue. The Haines/Skogway shuttle would continue to operate.

Maximum Wetlands Filled	= 1.9 Acres
Maximum Marine Waters Filled	= <2.9 Acres
Total Other U.S. Waters Filled	= 0.2 Acres
Total Waters of U.S. Filled	= <5.0 Acres
Permanent Loss of U.S. Waters	= <5.0 Acres

2003 Modified Alternative 2: East Lynn Canal Highway between Juneau and Skagway, without a Katzeihin Terminal.¹⁸ This alternative was dropped from further consideration due to concerns on how the road would affect the Klondike Gold Rush National Historical Park and

¹⁸ This Alternative was discussed briefly in the FEIS, Technical Appendix A, Section 2.0 Alternative Screening, page 13. Also, see the Memorandum of Understanding between the USFS and the ADOT, dated September 22, 2006, with map and Section 4407 D-1 Easement (email from USFS, dated May 30, 2007).

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surrounding Section 4(f) lands, an issue raised by the National Park Service.

Alternatives Conclusion: The Corps examined the alternatives found in Section VI, Part A to ensure all reasonable and potentially practicable alternatives were evaluated in this ROD. The Corps determined it was necessary to add a Modified Alternative 3 to address issues raised by the EPA, National Marine Fisheries Service (NMFS) and USFWS, to complete a practicability determination. This alternative was coordinated with ADOT. ADOT provided the acreage of fill placed in waters of the U.S. and ferry capacity calculations.

Modified Alternative 3: This alternative incorporates a change in the operation of Alternative 3 to avoid potential impacts to endangered species in Berners Bay. This alternative would extend Glacier Highway 5.2 miles from Echo Cove to Sawmill Cove. New ferry terminals would be constructed at both Sawmill Cove, and at William Henry Bay. Improvements would be required at the existing Auke Bay terminal. Shuttle ferries would transport vehicles between William Henry Bay and Sawmill Cove. A 38.9-mile highway would be constructed from William Henry Bay northward to Haines. The Sawmill Cove terminal in Berners Bay would be closed for six weeks, mid April to the end of May. The improved Auke Bay terminal would be used during this time; and the ferries would shuttle between Auke Bay and William Henry Bay. The *M/V Aurora* would continue to operate as a shuttle between Haines and Skagway.

Maximum Wetlands Filled	= 26.4 Acres
Maximum Marine Waters Filled	= 11.6 Acres
Total Other Waters U.S. Filled	= <2.0 Acres
Total Waters of U.S. Filled	= <40.0 Acres
Permanent Loss of U.S. Waters	= <40.0 Acres

The Corps determined it was necessary to add a Modified Alternative 2B to address avoidance and minimization issues, and to complete a practicability determination. This alternative took the components of Alternative 2B and examined each component to determine if additional avoidance and minimization was practicable. This alternative was coordinated with ADOT. ADOT provided the acreage of fill placed in waters of the U.S. and new plans.

Modified Alternative 2B: East Lynn Canal Highway to Katzeihin, Shuttles to Haines and Skagway: This alternative would result in the construction of "...a 50.8-mile long two-lane highway from the end of Glacier Highway at Echo Cove around Berners Bay and along the coast of Lynn Canal to a point north of the Katzeihin River delta. The Haines to Skagway shuttle service would continue to operate, with two new shuttle ferries and the *M/V Aurora* forming a three-vessel system connecting Katzeihin, Haines, and Skagway. AMHS mainline ferry service would end at Auke Bay, and the *M/V Fairweather* would no longer operate in Lynn Canal." The road was rerouted to avoid freshwater wetlands, and additional wetland mapping was done at Antler Creek to avoid these wetlands. The marine rock disposal area was reduced in size, and restricted to specific areas. The roadway was redesigned to incorporate additional fill in the road prism.

Roadway Fill in Wetlands	= 44.4 Acres
Roadway Slope Stabilization	= 17.5 Acres

Stream Channel Work	=	1.3	Acres
Roadway Fill in Marine Waters	=	25.6	Acres
Marine Rock Disposal	=	14.8	Acres
Ferry Terminal	=	3.8	Acres
Ferry Breakwaters	=	2.7	Acres
Total Waters of U.S. Filled	=	110.1	Acres
Permanent Loss of U.S. Waters	=	95.3	Acres

B. Discussion of Alternative Ferry Terminal Site Designs and Locations.

The ADOT provided marine ferry terminal designs for several of the sites, under various alternatives: Auke Bay¹⁹, Sawmill site, Slate Creek Cove site, William Henry Bay site, and three designs for the Katzeihin River site.

There were several ferry terminal site locations discussed in the FEIS²⁰, and each was tied to a specific alternative. Each would be either a new facility, or a modification of an existing facility.

WILLIAM HENRY BAY SITE: The terminal would include a single side ferry berth. The transfer bridge is accessed by 24-foot wide by 210-foot long pile-supported dock structures. The long approach dock is necessary to reach sufficient water depths at this site without dredging. The transfer bridge would be raised and lowered via a mechanical lift system. Fixed dolphin structures would be utilized to moor the ferry during pedestrian and vessel transfers. The staging area abuts steep upland topography. The staging area will require some upland excavation into the hillside, but will consist mostly of tideland fill. A total upland area of 1.9 acres is shown. No dredging is contemplated at this terminal location. Vessels would not berth overnight at this site.

SAWMILL COVE SITE: The site is relatively well protected from southeast winds but is exposed to the northerly fetch of Berners Bay and, to some extent, refracted waves from Lynn Canal. The berth would consist of two bridge support floats and a shared dolphin system comprised of all-tide floating fenders. Access to the vessels would be via twin 143-foot steel transfer bridges. The staging area would be constructed as a combination of tideland and upland fill that would encompass approximately 3.1 acres. The existing upland topography is relatively steep and most of the staging area would be constructed near the tidelands in order to avoid deep excavation of the hillside. The offshore topography drops into deep water beyond the minus 20-foot contour line making construction of pile structures difficult. Dredging is required to move the facility towards the shore to limit the water depth at the outer mooring structure.

SLATE CREEK COVE WEST: This site would be situated on the west side of the Slate Creek Cove. This facility would be a single side berth consisting of a steel transfer bridge abutting offshore fill and supported at the seaward end by a steel bridge float. There would be fixed dolphin structures with all-tide floating fenders or fixed mooring faces. This site would not be a home-port for a vessel. The uplands²¹ would be constructed as a combination of intertidal and upland fill. Some local excavation of an existing beach-front bluff would be needed. Total fill for the staging area is 2.1 acres. No dredging would be required.

¹⁹ Master Plan for the Auke Bay facility.

²⁰ FEIS, Appendix D, Technical Alignment. Attachment D, Marine Terminal Concepts. November 21, 2003.

²¹ The ADOT use of 'upland' could include both uplands and wetlands of the U.S.

SLATE CREEK COVE EAST: On the East side of Slate Creek Cove, is a site currently operated by Coeur Mineral Alaska, Incorporated (Coeur). The existing moorage facility, which has a float dock with a ramp to the road, and a large barge loading ramp built in Slate Creek Cove. This facility was constructed to support the Kensington Gold Mine. The Coeur site is not owned by the State, and will not be available for the duration of the mine, a minimum of 12 years.

KATZEHIN RIVER SITE: This project site is situated just north of the mouth of the Katzehin River. The upland topography north of the river mouth becomes extremely steep and rugged. Deep water depths are encountered immediately north of the river delta. The north side of the river delta was chosen as the terminal location. It affords some southern wave protection, has access to deeper waters, and has ample land area for construction of uplands²². One of the stated reasons in the FEIS for the ADOT selecting the Katzehin River site for a marine terminal was the availability of "ample land area for construction of uplands"²³. However, little to no construction activity for the terminal was proposed on existing adjacent uplands, other than road construction. This was due to the presence of a bald eagle nest tree which is located in the immediately adjacent uplands.

The three layouts, for the Katzehin site, varied in area of impact from 1.9 acres of waters of the U.S., up to 67 acres of waters of the U.S. Each is briefly described below²⁴.

Layout 1: A fill structure with a lift bridge, and a mooring system unprotected from wave action from the north. Approximately 1.9 acres of waters of the U.S. would be impacted.

Layout 2: Two breakwater structures protecting a vehicle transfer bridge: one would be on the north side of the facility, and the other on the south. The site would have a dredged moorage basin, and approximately 5.9 acres of U.S. waters would be impacted.

Layout 3: A dredged moorage basin, 67 acres, would be enclosed by a breakwater. Total area of impact to U.S. waters would be approximately 100 acres.

Design and Location Conclusion: The Corps examined the designs and locations found in Section VI, Part B, to ensure that all reasonable and potentially practicable site designs and alternatives were evaluated. The Katzehin site, layout 2, was reduced in footprint to a 4.4 acre dredged mooring basin with breakwaters.

C. Discussion of Alternative Material Disposal Sites.

ADOT's Preferred Material Discharge: Alternative 2B stated that approximately 1.4 million cy of waste rock would be discharged into pre-selected deepwater locations within Lynn Canal. ADOT's proposal was that the

²² The ADOT uses the 'discharged fill in U.S. waters' interchangeably with 'uplands'.

²³ Later conversation with the ADOT after publication of the FEIS revealed that the ADOT defines the fill which could be discharged into waters of the U.S., as providing "ample land area", which should not to be confused with existing uplands.

²⁴ See FEIS, Appendix W, Technical Report Addenda, pages W-69 through W-87.

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material would be deposited indiscriminately over a 150-acre area containing marine intertidal and subtidal substrate. No consideration was given to whether the material would be deposited in a single pile, or spread evenly out in a thin layer over the entire 150 acres, or in a combination of the two. ADOT anticipated that, due to the generalized method of material dumping by barge mounted equipment, the final topography of the marine substrate would be 'lumpy', which is described as the ocean bottom (Lynn Canal) having small hills (discharged fill) with open areas in between, with no more than 30% of the proposed 150-acre area covered. The ADOT subsequently stated in various correspondences that the final selection of disposal sites and methods would be left up to the contractor(s) awarded the contract on the road project.

Modified Alternative 2B changed the open water disposal of waste rock to approximately 430,000 cy into 14.8 acres of navigable waters of the U.S., using designated locations for the disposal sites. The shorelines adjacent to the marine sites where open-water disposal was proposed were investigated and evaluated with respect to habitat types and this information was discussed in the FEIS. The habitats were separated into three categories: (a) sediment beaches, (b) bedrock cliffs and vertical rock faces, and (c) a combination of beach and bedrock.

(a) Sediment beaches are characterized by having "...varying combinations of boulder, cobble, gravel, sand, and/or silt." Each site was distinctly divided into three zones:

- High intertidal: with populations of black lichen, with periwinkle, acorn barnacle, limpets, and small isopods such as *Ligiea pallasii*.
- Mid intertidal: with populations of *Fucus*, green algae, brown algae, and sea lettuce; periwinkle, acorn barnacle, and blue mussels.
- Lower intertidal: with populations of red algae (both coralline and filamentous) and brown algae, sea lettuce; limpets, sponges, chitons, and green sea urchins.

(b) Bedrock cliffs and vertical rock faces are characterized by being almost all rock with little to no sediment. The marine habitat included *Fucus*, brown algae, sea lettuce and red algae. No faunal organisms were observed due to the "nature of the survey".

(c) Combination of Beach and Bedrock. The faunal and floral species making up this combination include those in (a) and (b) above.

The FEIS, Appendix N, Essential Fish Habitat, Table 4.1 Subtidal Fill/Side-casting Sites noted that there is a crab harvest in the area. No resource agency expressed an objection to the placement of waste rock in the Modified Alternative 2B areas. The EFH review completed for the 150 acres covered the area found in 14.8 acre disposal site. No adverse EFH issues were raised on the disposal site.

Upland Disposal Locations: The majority of the uplands along the road corridor are public lands managed by the USFS. The applicant stated²⁵ that they had discussed the road project with the USFS and that it has "been a

²⁵ October 24, 2006, e-mail message from Reuben Yost, ADOT Juneau Office.

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long-established policy going back before the start of this project" to not allow "waste sites or stockpiles during project development" on USFS lands. The applicant provided the Corps a copy of a May 23, 2006, letter from the USFS to the FHWA that stated the right-of-way conditions the USFS would require. This included the following condition:

"The Grantee shall establish no borrow, sand, or gravel pits; stone quarries, permanent storage areas; sites for highway operation and maintenance facilities, camps, supply depots, or disposal areas within the right-of-way; unless shown on approved construction plans, without first obtaining approval of the Regional Forester, provided that rock and aggregate located within the designed clearing limits may be moved along the highway for use at other locations."

The USFS stated in a March 21, 2005, letter²⁶ to the ADOT that the excess rock was a "valuable National Forest Resource." The USFS also recommended "more analysis and the development of alternative methods to better utilize this valuable rock resource." ADOT continued to reduce the volume of waste rock by incorporating passing lanes and turn outs in the project design for use within the right of way in Modified Alternative 2B. The availability of additional unencumbered USFS uplands within the right of way is limited in the project site.

Permanent Storage and/or Stockpiling for a community structure: The applicant stated in an August 16, 2006, letter to the Corps that it would be cost prohibitive to barge the waste rock to a local community for stockpiling, but not cost prohibitive to barge the rock for immediate use to the same community. The ADOT also provided an analysis showing that it would cost \$22.94/cy to transport and offload the rock to an upland area at the nearest community for a total cost of \$32,109,126²⁷. ADOT stated that this is not practicable since it would be 3 to 10 times more than the cost of rock at existing rock sources in these communities. This increase in cost is caused by "double handling" the material, e.g., unloading and stockpiling, then reloading and hauling the rock to a construction site. ADOT stated that it would be practicable to transport the rock to these same communities for a marine project requiring such rock, since the only cost would be for barging, but ADOT was not aware of any such marine projects.

Disposal Sites Conclusion: 40 CFR Part 230.10, states in part: "(a)...no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." With the change to two disposal sites, totaling 14.8 acres, no other marine sites with less impact are available. Ocean dumping when confined to the two designated locations "A & B" and "C & D", has the least environmental impact on the aquatic ecosystem. The USFS is unlikely to designate and permit large disposal areas with their accompanying access roads on USFS lands which might also impact additional waters of the U.S. ADOT has clearly demonstrated that no upland disposal sites exist for the proposed waste rock. Therefore, Modified Alternative 2B satisfies 40 CFR Part 230.10, that there are no practicable alternative disposal sites available which would have less adverse impact on the aquatic ecosystem.

²⁶ See FEIS, page 7-17

²⁷ The change in anticipated volume of waste rock to 430,000 cy, would result in changing the total cost of barging to the nearest community to \$9,864,200, or one third of ADOT'S original anticipated cost.

VII. PROJECT COSTS

The Corps reviewed the costs presented in the FEIS for construction, maintenance, and operation for the alternatives listed in Section VI of this ROD. The costs are included in the Summary Table found in Section VIII of this ROD, page 24. The capital, construction, operation, maintenance, and life cycle costs were not a deciding factor in the 404(b)(1) analysis of the least environmentally damaging practicable alternative.

VIII. ANALYSIS OF THE LEAST ENVIRONMENTALLY DAMAGING PRACTICABLE ALTERNATIVE

As discussed in Section III, the overall project purpose, is to "to provide improved surface transportation with increased capacity to meet demand, provide flexibility, improved opportunity for travel, and reduced travel time between the Lynn Canal communities of Juneau, Haines, and Skagway." Furthermore, as noted in the Guidelines, the analysis of alternatives required for NEPA environmental documents will, in most cases, provide the information for the evaluation of alternatives under the Guidelines. On occasion, these NEPA documents may address a broader range of alternatives than required to be considered under the Guidelines. The alternatives discussed in the FEIS covered an appropriate range of alternatives for the current proposal, and the alternatives considered in the analysis in Section VI under the Guidelines are essentially the same.

Based on information provided in the FEIS, the application, and reviewing the acreages of impact to waters of the U.S. for each of the proposed alternatives, the No Action Alternatives and Alternatives 4A and 4C would have the smallest permanent impact to the aquatic environment over the anticipated life of the project. See the Summary Table page 24.

In Modified Alternative 2B construction of the highway from Echo Cove north to the Katzeihin River would result in the discharge of approximately 430,000 cy of waste rock into 14.8 acres of marine subtidal waters of the U.S. The bottom substrate at the proposed offshore disposal sites was anticipated to be predominantly mud. The addition of rock fill would result in a temporal modification of the habitat, that is, this action would result in replacing one type of marine ocean bottom habitat with another. The new rocky bottom would have increased surface area which would be recolonized by invertebrate marine species; and therefore, would not result in a permanent loss of ocean bottom habitat.

The Corps' evaluation places special emphasis on the persistence and permanence of the effects described in this ROD and the FEIS [see 40 CFR 230.10(c)]. The permanent loss of aquatic habitat (wetlands)²⁸ functions and values by the road construction in waters of the U.S. by Alternative 2B or Modified 2B would be more damaging than the temporary loss of subtidal habitat from the waste rock disposal in the marine waters²⁹. There would be a marine discharge associated with the road construction in the following situations: 1) for construction of the Katzeihin River delta ferry terminal; 2) at small near shore intertidal and subtidal marine fills where the proposed road would be constructed in or immediately adjacent to Lynn Canal;

²⁸ The majority of the wetlands to be impacted would be heavily forested, with some scrub-shrub forest mix.

²⁹ The discharge into marine waters would temporarily cover the existing rock substrate with rock material which in turn would become substrate for recolonizing life forms. However, the discharge in wetlands would result in a permanent conversion of waters of the U.S. to uplands

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and 3) in the case of steep topography, where the discharges could not be avoided in marine waters due to the confined work space. Road and ferry terminal fills would be permanent impacts to waters of the U.S.

Impacts to waters of the U.S.³⁰ at William Henry Bay: The ferry terminal at William Henry Bay would be built between two cataloged anadromous fish streams; in-water construction windows would protect anadromous and marine species as necessary. No effects are expected on anadromous EFH [Essential Fish Habitat] at the Beardslee River or William Henry Creek due to construction of a ferry terminal in William Henry Bay. Pile driving for the construction of the ferry terminal could disturb humpback whales in the area.

Appendix N, Essential Fish Habitat, page 5-30, stated "...orange sea pens are common in the deeper (30 to 60 feet), northern part of the site, and sea whips were also noted in the deep, northeastern corner (greater than 57-foot depths)."³¹ In addition, there were no documented herring spawning areas on the west side of Lynn Canal³².

Steller sea lions were observed at the William Henry Bay site, as this is a known foraging area. However, there are no documented haul-out sites located on the west side of Lynn Canal.³³

Impacts to waters of the U.S.³⁴ at Sawmill Cove: "...Approximately 3.2 acres of intertidal/subtidal habitat would be filled or dredged for the Sawmill Cove Ferry Terminal. The impact to 3.2 acres of intertidal and subtidal habitat, the replacement of natural substrates due to terminal construction, and the dredging of approximately 26,000 cy for a mooring basin would alter habitat usage in the disturbed area. Filling would result in the loss of habitat while dredging and ongoing use would substantially reduce habitat value in the dredged areas. The Sawmill Cove Ferry Terminal would cover approximately 300 feet (0.06 mile) of shoreline at MLLW. This is less than 2 percent of the alongshore herring spawning length (approximately 3 miles) observed in Berners Bay in 2003. This habitat loss would impact Pacific herring spawning because the Sawmill Cove site provides spawning habitat for this species. Eulachon (hooligan) start showing up in Berners Bay early April and usually peak around mid-April to early May, and are up the rivers and spawned out by mid-May. They enter the bay on the east side (Point Mary) and stay to that side, including Slate Creek Cove while they aggregate for their runs up the rivers."³⁵ The Sawmill Cove Ferry Terminal is over a mile from anadromous Sawmill Creek. Typical breasting dolphins used for ferry terminals allow for free passage of fish. Pile driving for the construction of the ferry terminal could disturb humpback whales in the area. Neither the in-water fill for the ferry terminal building/parking areas, nor the ferry terminals themselves would impede fish movements to and from Sawmill Creek or within Berners Bay. The incremental effect of the Sawmill Cove Ferry Terminal on Pacific herring stock is relatively small -- this would be an EFH impact because of the depressed herring stock in Lynn Canal. Maintenance and

³⁰ FEIS, Appendix N, Essential Fish Habitat Assessment. Page 5-33.

³¹ Sea Pens and Sea Whips are coralline organisms listed as special aquatic sites (40 CFR Part 230.44, Coral Reefs).

³² FEIS, Appendix N, Essential Fish Habitat Assessment, "Reconnaissance Evaluation of Ecological Effects to Forage Fish Populations Associated with the Project, dated October 2004.

³³ FEIS, Appendix S, Steller sea lion.

³⁴ FEIS, Appendix N, Essential Fish Habitat Assessment, "Reconnaissance Evaluation of Ecological Effects to Forage Fish Populations Associated with the Project, dated October 2004.

³⁵ Email from Mr. Carl Schrader of the Alaska Department of Natural Resources, Habitat Division on August 17, 2007.

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operations of the Sawmill Cove Ferry Terminal could cause temporary disturbance to Steller sea lions in Berners Bay, particularly in late April and early May, while they are feeding on spring forage fish aggregations. NMFS has expressed concern that yearly operations of the ferry terminal at Sawmill Cove could have potential adverse direct and indirect effects on Steller sea lions.³⁶

Appendix N, Essential Fish Habitat, page 5-30, stated "In the subtidal zone, one location of orange sea pens (*Ptilosarcus gurney*) was noted in the northern third of the site (estimated at an area of 21,500 square feet; depth ranging from 50 to 80 feet)".

Impacts to waters of the U.S.³⁷ at the Katzeihin Site: The ferry terminal basin and building/parking area construction activities at the Katzeihin location would have effects on intertidal sediment beaches and subtidal mud bottom habitat marine EFH, but not on the site's sparse subtidal vegetation. No effects on anadromous EFH would be expected at the Katzeihin terminal site due to its distance from the Katzeihin River or other anadromous streams. In addition, in-water construction windows would be established if necessary to protect anadromous and marine species. Pile driving for the construction of the ferry terminal could disturb humpback whales in the area. There are known Steller sea lion haul-out sites located on the east side of Lynn Canal at the Katzeihin River mouth, Gran Point, and within Berners Bay. There are foraging areas for Steller sea lions on the east side of Lynn Canal. Foraging by humpback whales and Steller sea lions also takes place south of Katzeihin delta in Lynn Canal and specifically within Berners Bay during herring spawn. NMFS concurred that the activities associated with the Project are not likely to adversely affect the endangered humpback whale, the threatened eastern distinct population segment (eDPS) of the Steller sea lion, the endangered western distinct population segment (wDPS) of the Steller sea lion, or the Steller sea lion critical habitat.³⁸

The Corps' and the FEIS' 'environmentally preferred' alternative, is Alternative 4C, which is ferry-based in part, has a permanent loss of less than one acre. Concerns have been expressed because of the speed of fast ferries would result in greater impact to marine species during a ferry/wildlife collision: this concern would apply to all alternatives that would employ one or more ferries in their design. Since both alternatives 4A and 4C would use the existing Auke Bay ferry terminal, environmental impacts would be minimal.

Alternatives 3, 4B and 4D would each require a new ferry terminal in Berners Bay at Sawmill Cove, and this would result in increased, direct and indirect environmental impacts, e.g. threatened and/or endangered species³⁹. Modified Alternative 3, would avoid conflicts with the threatened and endangered species by alternating the Auke Bay ferry terminal with the Sawmill Cove marine terminal during a six-week period when herring spawn in Berners Bay. Two alternative sites could be found in Slate Creek Cove. One site is located on the eastern shore and one on the western shore. See Section VI, Part B, ferry terminal sites and designs.

³⁶ FEIS, Section 4, Environmental Consequences of the Alternatives, page 4-109.

³⁷ FEIS, Appendix N, Essential Fish Habitat Assessment, page 5-22.

³⁸ NMFS to FHWA in a letter dated August 7, 2007.

³⁹ FEIS, Section 4, Environmental Consequences of the Alternatives, page 4-109. Alternative 3 does not affect any identified Steller sea lion haul out sites or designated critical habitat.

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The ADOT stated⁴⁰ that "While Alternative 3 would impact fewer acres of wetlands and marine waters than Alternative 2B; the impacts are greater in that they are to higher value habitat that is limited in the area." ADOT concluded that "...due to the impacts to Berners Bay and William Henry Bay, Alternative 3 is more damaging to the aquatic environment than Alternative 2B." However, the impacts alluded to were to (1) the coralline organisms; and (2) the potential impacts to ESA species that would occur during the six week period each year when the herring spawn in Berners Bay. Both the NMFS and the EPA (see EPA comment letter, dated June 6, 2006, below) noted this, and the EPA went on to state "The applicant's proposed conservation measures for Alternatives 4B and 4D would allay EPA's concerns about potential impacts on herring spawning in Berners Bay. Alternatives 4B and 4D include ferry service from Berners Bay in the summer and from Auke Bay in the winter. To avoid impacts on herring spawning, ferry operations in Berners Bay would not begin until after the herring spawning period. The same conservation measures could be applied to Alternative 3 (i.e., ferry service from Berners Bay year round, except ferry service from Auke Bay during the herring spawning period). Under this scenario, Alternative 3 is clearly less damaging to the aquatic ecosystem than Alternative 2B." The Corps concurs that Modified Alternative 3 is less damaging to aquatic resources when compared to Alternative 3 and Alternative 2B. The only 'unique' characteristics identified for either side of Lynn Canal was at the marine terminal sites at Sawmill Cove and William Henry Bay: the presence of sea pens and/or sea whips. These special aquatic sites were located on the northern fringe of each of the project areas (William Henry Bay and Sawmill Cove).

Practicability Demonstration:⁴¹ The ADOT demonstrated that four of the evaluated alternatives⁴² were not practicable in light of the Corps overall project purpose⁴³. Page S-1 of the FEIS stated that it was, "dropping alternatives that are no longer reasonable..." Further, page S-2 of the FEIS stated, "Following are brief descriptions of the reasonable^{44, 45} alternatives evaluated in the Final EIS" and the alternatives are those described above. The FEIS stated that "...the original marine options in the 1997 Draft EIS were based on improving service in Lynn Canal with the marine technology prevalent in the mid-1990s. All four options utilized the same vessel, the high-speed Wavepiercer catamaran, capable of carrying 105 vehicles. As with the highway alignment adjustments that occur to reduce impacts or utilize new information, new Alternatives 4A through 4D replace the original marine options from the 1997 Draft EIS. The original marine options are variations that are no longer relevant, and therefore were dropped from further consideration." The FEIS listed⁴⁶ a number of alternatives as 'reasonable' that were evaluated further in the FEIS: these are the alternatives briefly described above (see Alternatives considered in the 2006 Final EIS).

⁴⁰ FEIS, Appendix X, page X-109.

⁴¹ "Practicability" is defined in the Section 404(b)(1) Guidelines at 40 CFR 230.10(a)(2) and considers "cost, existing technology, and logistics in light of the overall project purpose".

⁴² FEIS, page S-2, Alternatives Evaluated in the Final Environmental Impact Statement, and Section 2.2.8 Original Marine Alternative 4, Options A through D. This also includes the No Action Alternative presented in the DEIS.

⁴³ Corps ROD, Section III, Overall Project Purpose.

⁴⁴ Reasonable is defined by the Council of Environmental Quality as Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.

⁴⁵ The ADOT used the term 'reasonable' as opposed to 'practicable' in its own practicability analysis, which is not the same analysis, which the Corps uses to determine practicability.

⁴⁶ FEIS, Chapter 2, page 2-7, Table 2-1.

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Alternatives 4A, 4B, 4C, and 4D all provide fewer round-trips between Juneau and Skagway/Haines than Alternatives 2B, Alternative 3, Modified Alternative 3, or Modified Alternative 2B. Alternatives 4A, 4B, 4C, and 4D all provide longer travel times between Juneau and Skagway/Haines than Alternatives 2B, Alternative 3, Modified Alternative 3, or Modified Alternative 2B. During an October 26, 2006, meeting between the Corps and the ADOT, the ADOT stated that "Alternative 4C was not practicable because: 1) it would not meet demand or capacity, and 2) it does not lower user costs. Alternatives 4A, 4B, 4C, and 4D do not increase capacity when compared to the other alternatives including the No Action Alternative (See Factors Table).

The No Action Alternative and Alternatives 4A, 4B, 4C, and 4D all fail to increase capacity, and thus fail to provide increased flexibility, for travel between the Lynn Canal communities of Juneau, Haines, and Skagway. Therefore, the Corps concludes that the No Action Alternative, and Alternatives 4A, 4B, 4C, and 4D are not practicable in light of the Corps' overall project purpose.

Permanent Aquatic Losses:⁴⁷ Alternative 2B would result in the largest permanent acreage loss of aquatic habitat, which is primarily forested wetlands, but does include marine intertidal and subtidal waters. The functional values of the wetlands within the proposed highway corridor were investigated⁴⁸ and determined to include groundwater recharge, wildlife habitat, and nutrient transport. Placement of fill material into these aquatic areas would reduce these wetland functions to zero. Upon completion of the road construction, the developed areas might regain some habitat value (e.g. wildlife habitat) over time, but no wetland functions. This replacement of one habitat type with another would not be expected to occur in the short term.

The functional values along the highway corridor would cease immediately with land clearing operations with the possible exception of ground water recharge. The continued presence of humans and equipment would ensure that the project site was devoid of all habitat values, or 'zero-function'⁴⁹. The resultant conversion of wetlands to uplands would be permanent.

Construction of a ferry terminal facility at the Katzeihin River delta would require the permanent filling of approximately 6.5 acres of marine waters, plus the dredging of 4.4 acres of navigable waters of the U.S. Dredging, however, would only result in the modification of fish and wildlife habitat functions, and would be a temporary impact. The dredged material would be used on site in the ferry terminal fill. The Katzeihin terminal site would be recolonized with various faunal and floral species on the permanent structures in marine waters (piles, armor rock, floats, etc.)

The process of open-water disposal of waste rock into marine waters would initially kill⁵⁰ most plant and animal organisms at the points of impact/coverage on the ocean bottom. However, the discharged material could provide a multi-textured bottom substrate for a larger variety of marine

⁴⁷ FSEIS, Chapter 3, Section 3.12.3, and Chapter 4, Section 4.12.3.

⁴⁸ Juneau Access Improvements FEIS, Appendix O, Wetlands, Table 4-4

⁴⁹ Zero-function is defined here as having no vegetation or water sources present, and having only bare ground and therefore providing no habitat functions such as food sources, cover from predation, nesting sites, all of which is supportive of wildlife and/or fish populations.

⁵⁰ Plant burial or animal organisms by suffocation, blocking the gills with sediment.

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floral and faunal organisms than currently inhabit the area and in turn would become substrate for recolonizing life forms.

Alternative 3 and Modified Alternative 3 would result in fewer wetland and marine acres permanently filled than Alternative 2B or Modified Alternative 2B.

Travel Time: Travel times for each alternative were expressed in the FEIS in terms of travel from Auke Bay to Skagway. The information given below was provided in Table 2, Appendix X⁵¹.

FACTOR	Alternatives ⁵²						
	No Action	2B	3	4A	4B	4C	4D
Summer Travel Auke Bay to Skagway (hours)	3.8/9.1	3.0	4.2	4.1/9.1	3.8/9.1	6.3/9.1	5.3/9.1
Summer Travel Auke Bay to Haines (hours)	3.5/7.1	2.5	2.9	3.8/7.1	3.5/7.1	6.0-7.1	5.0-7.1

The differences in travel times range from 2½ hours to nearly 10 hours, with Alternative 2B providing the shortest travel time with Alternative 3 a close second. Travel times increase for Modified Alternative 3 during the six-week herring spawn window.

Alternative 2B would have a marine terminal located north of the Katzehin River and use ferry travel between the Katzehin marine terminal and Haines and Skagway to reduce the overall travel times between Juneau and Haines and/or between Juneau and Skagway.

The ADOT defined "flexibility and opportunity" in terms of numbers of round-trips per day, and provided the following supporting information:

FACTOR	Alternatives						
	No Action	2B	3	4A	4B	4C	4D
# of Ferry Round Trips per week from Auke Bay to Skagway	7	42	42	16	16	9	16
# of Ferry Round Trips per week from Auke Bay to Haines	8	56	84	16	30	9	16

Note that with Alternative 2B, the FEIS still lists the numbers of vessel round-trips between from Auke Bay to Skagway and Haines, though the FEIS stated that with the selection of Alternative 2B, no ferries would travel northward from Auke Bay, only from the Katzehin marine terminal. However, the FEIS did state that "winter travel would be limited by road closures for avalanche control; however, one or more ferries would be available to shuttle vehicles and passengers in Lynn Canal on days when the highway is closed."⁵³

Alternative 3 would have a ferry system to transport vehicles and people across Lynn Canal (Sawmill Cove to/from William Henry Bay), but not from Auke Bay to Skagway or Auke Bay to Haines. Modified Alternative 3 would provide transport from Auke Bay to William Henry Bay.

⁵¹ Draft Section 404/10 Permit Application, Draft Section 404(b)(1) Analysis, Wetlands Finding, page X-99.

⁵² The times are presented in format: Fast Ferry / Mainliner Ferry. Also, staging (docking, maneuvering, etc., associated with ferry arrivals and departures are included in the ferry travel times.

⁵³ FEIS, Chapter 2 (Project Alternatives), page 2-11.

Meeting Vehicle Demand: According to FHWA and ADOT, Alternative 2B best accommodates the initial and the 30-year average daily traffic, summer travel, and total vehicle demand, when compared to the other alternatives.⁵⁴
⁵⁵. Under Alternative 2B, and Modified Alternative 2B up to 670 vehicles (per day, 30th year annual average) would be accommodated, as compared to Alternative 3, and Modified Alternative 3, which would only accommodate up to 530 and 474 vehicles per day, respectively, a difference of 140 and 196 vehicles, respectively. The No Action Alternative and Alternatives 4A, 4B, 4C and 4D would each carry less than 30 per cent of the anticipated daily vehicle demand. This very low capacity to meet the anticipated daily demand makes the No Action Alternative, Alternative 4A, Alternative 4B, Alternative 4C, and Alternative 4D not practicable from a logistical perspective.

The peak travel time is in the spring. This is the time during which Modified Alternative 3 would be implemented yearly. Modified Alternative 3 reduces the daily capacity, during the critical spring window, from 1008 vehicles daily to Haines to a maximum of 336 vehicles (See Summary Table). April (two weeks) and May (all) traffic is therefore limited to the 336 vehicle capacity to Haines. This logistical limiting factor forever limits travel to a number that is substantially less than the projected demand. This is a reduction of 672 vehicles a day. ADOT has also stated that the reduced capacity and the inability to meet demand would result in a decreasing demand. ADOT concluded that 9,575 fewer vehicles would be transported during the first year. ADOT must plan on this logistics restriction yearly. The presence, magnitude, or exact timing of the herring run can not be predicted by year. Even though herring only spawn once every fifth or sixth year in Berners Bay Modified Alternative 3 would result in a yearly reduction in capacity, not a once every fifth or sixth year reduction. Fuel delivery, crew schedules, and ferry schedules all must be planned and set in place well in advance. The logistics of running a ferry system are complicated by a move from one terminal to another terminal for the same run every year. This loss of capacity gets worse over time as the projected demand increases. Auke Bay becomes a bottle neck six weeks a year, every year, reducing the ferry travel capacity in Lynn Canal each spring.

The FHWA indicated in their December 4, 2007, letter to the Corps, that Modified Alternative 3 would handle only one half of the overall demand by the 30th year of operation. The use of Modified Alternative 3 also increases the travel time from Juneau to Skagway. Half the people requiring ferry travel would be left behind each ferry cycle in the 30th year. This situation would not reduce the travel time for the majority of people traveling from Juneau to Skagway or from Juneau to Haines. The FHWA concluded that the increase in travel time to Skagway and the inability to meet the projected demand makes Modified Alternative 3 not practicable.

The Corps concludes that the combined problems of meeting capacity; the increased logistical support requirements to manage two east side ferry terminals in Lynn Canal for the same run; the reduction in capacity of 9,575 vehicles in year one; reduction in peak season capacity (May) and two weeks in April to a maximum of 336 vehicles daily; and the increasing failure to meet capacity over time all combine to render Modified Alternative 3 not practicable.

⁵⁴ ADOT's letter dated October 8, 2007.

⁵⁵ FHWA's letter to the Corps, dated December 4, 2007.

In contrast, Alternative 2B and Modified Alternative 2B will handle three-fourths of the overall demand by the 30th year. In addition, Alternative 2B, and Modified Alternative 2B, will provide substantially more spring time capacity (544 vehicles daily) than Modified Alternative 3 (336 daily) to Haines: more capacity to Skagway 636 versus 101 vehicles daily; require the operation of only one east side Lynn Canal Ferry terminal; and the short ferry distance from Katzeihin to Haines and Skagway allows the ferry route to meet daily projections immediately. The shorter distance allows for two ferries going from Katzeihin to Haines to increase the carrying capacity, and reduce the wait time, and thus decrease the travel time. Alternative 2B and Modified Alternative 2B therefore, provides sufficient capacity to meet demand, provides flexibility, provides improved opportunity for travel, and reduces travel time between the Lynn Canal communities of Juneau, Haines, and Skagway as defined in the Corps' overall project purpose.

CONCLUSION: The Summary Table displays data from agency input, conclusions reached in the previous sections of this ROD, and the FEIS. There are five⁵⁶ alternatives described in the 2006 FEIS, Modified Alternative 2B and Modified Alternative 3, all of which would be less environmentally damaging than Alternative 2B. The Corps has determined that the ferry subset of these alternatives 4A through 4D have less environmental impact, with Alternative 4C being the very least environmentally damaging alternative, when considering all of the alternatives in the FEIS and/or modified by our 404(b)(1) compliance determination review.

Alternative 3 and Modified Alternative 3 would result in a permanent loss of less than 40 acres of U.S. waters. Alternative 3 would adversely impact endangered species. Modified Alternative 3 addresses that issue.

Alternative 3, Modified Alternative 3, 4A, 4B, 4C, and 4D, discussed in paragraphs above, failed to satisfy the overall project purpose⁵⁷. Alternative 3, Modified Alternative 3, 4A, 4B, 4C, and 4D, are determined not to be practicable after taking into consideration cost, existing technology, and logistics in light of the overall project purpose. Logistics and available technology were the deciding factors in this analysis.

Alternative 2B has a permanent loss of 103 acres of waters of the U.S. Modified Alternative 2B has a permanent loss of 95 acres of waters of the U.S.

Modified Alternative 2B is the least environmentally damaging practicable alternative considering cost, existing technology, and logistics in light of the overall project purpose. Logistics and available technology were the deciding factors in this analysis.

⁵⁶ FEIS, January 2006, Summary on page S-3: The No Action Alternative, and Alternatives 4A and 4C.

⁵⁷ Corps ROD, Section III, Overall Project Purpose.

RECORD OF DECISION
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SUMMARY TABLE⁵⁸

FACTOR	No Action	2B	2B Mod	3	3 Mod	4A	4B	4C	4D
ENVIRONMENTAL IMPACTS									
Number of river/stream crossings.	0	46	46	32	32	0	5	0	5
Wetland acres filled.	0	69.9	61.9	26.4	26.4	0	1.9	0	1.9
Other Waters of U.S. filled.	0	1.4	1.3	0	0	0	0	0	0
Total acres of marine waters filled.	0	182.1	46.9	11.6	11.6	1	2.9	1	2.9
Total acres of U.S. Waters filled.	0	253.4	110.1	<40	<40	<1	<5	<1	<5
Permanent loss of acres of U.S. Waters.	0	103.4	95.3	<40	<40	<1	<5	<1	<5
Essential Fish Habitat acres impacted.	0	36.4	36.4	12.9	12.9	0	3.2	0	3.2
COSTS									
Initial capital costs (millions).	0	258	NC ⁵⁹	268	280	131	142	111	103
30-life cycle costs (millions).	267	352	NC	375	385	495	482	326	313
TRAVEL TIMES									
Summer travel Auke Bay to Skagway (hours).	3.8/9.1	3.0	3.0	4.8	4.8	3.8/9.1	3.5/9.1	6.0/9.1	5.0/9.1
ROUND TRIPS									
# of ferry round trips per week from Auke Bay to Skagway.	7	42	42	42	42	16	16	9	16
# of ferry round trips per week from Auke Bay to Haines.	8	56	56	84	84	16	30	9	16
MEETING VEHICLE DEMAND									
Initial annual average daily traffic & total demand accommodated.	90 17.6%	380 74.5%	380 74.5%	310 60.8%	284 55.7%	140 27.4%	170 33.3%	100 19.6%	130 25.5%
30 th year annual average daily traffic & total demand accommodated.	130 14.0%	670 72.0%	670 72.0%	530 57.0%	474 51.0%	220 23.6%	270 29.0%	150 16.1%	200 21.5%
Summer capacity to Haines (vehicles per day).	96	544	544	1008	1008 May 336	229	284	154	208
Summer capacity to Skagway (vehicles per day).	71	636	636	408	408 May 101	223	227	149	203

⁵⁸ Information taken from FEIS, Appendix X, Part B, ADOT Revised Tables 1, 2, pages X-98 and X-99, Corps Public Notice

⁵⁹ Costs Not Calculated (NC) but will be higher than those of Alternative 2B. Avoidance and minimization would increase construction costs.

5/05/2008

IX. FINDINGS**1. OTHER REQUIRED AUTHORIZATIONS:**

- A. The Alaska Department of Environmental Conservation (ADEC) has issued a Certificate of Reasonable Assurance, dated June 26, 2006, with 10 conditions.
- B. The Alaska Department of Alaska Natural Resources (ADNR), Office of Project Management and Permitting, Alaska Coastal Management Program, has issued a Final Consistency Response (Concurrence), dated June 27, 2006. The ADNR, Office of Habitat Management and Permitting (OHMP) issued four fish habitat permits for the project on June 30, 2006. All the OHMP permits prohibited work below the ordinary high water of anadromous fish streams from March 15 to June 15 to protect out-migrating salmon.

2. COMMENTS RECEIVED:

- A. The ADOT responded by letter, dated June 12, 2006, addressing some of the comments received in response to the Corps Public Notice, dated April 21, 2006. The ADOT letter included a copy of the transcripts from the public hearings, which were held by the ADOT and the FHWA in accordance with National Environmental Policy Act (NEPA) regulations. The public hearings were held on February 16 and 17, 2005, in Juneau, Alaska, on February 23, 2005, in Haines, Alaska, and on February 24, 2005, in Skagway, Alaska (see case file, volume IV).

B. FEDERAL AGENCIES**Environmental Protection Agency:**

Comment letter dated June 12, 2006. The EPA's comments respective to the project centered on the 404(b)(1) Guidelines after describing the importance of the area as an aquatic resource of national importance (ARNI) in their cover letter. The EPA stated "The proposed highway may have substantial adverse effects on aquatic resources within the Berners Bay Land Use Designation II (LUD II) Management Area. This special area designation by Congress underscores the national importance of this area." The EPA concluded their letter by stating that "...EPA is committed to resolving these issues consistent with the process and timelines specified in the 1992 MOA [Clean Water Act Section 404(q) Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army]."

ADOT RESPONSE TO EPA COMMENT LETTER: The ADOT provided a detailed response to the EPA letter, of June 12, 2006, on August 16, 2006 (their responses are provided below). Corps personnel also met with personnel from ADOT, FHWA, EPA, USFWS, and NMFS on July 17 and July 24, 2006, to discuss the EPA issues. ADOT stated that Congress did not designate the Berners Bay area as a wilderness, as they did with six other areas, when they enacted the Tongass Timber Reform Act of 1990. The Berners Bay area was also not designated as wilderness under the 1980 Alaska National Interest Lands Conservation Act. Congress, instead, designated this area as a LUD

II area which "specifically allows road construction to meet transportation needs identified by the State." The ADOT states that previous Alaska Governor Hickel indentified this need in 1994 and "both the Knowles and Murkowski administrations have pursued a project to meet this need." The ADOT further stated that they have minimized impacts to this area as the project would impact approximately 17 acres of wetlands within Berners Bay drainages, but less than one acre of this would be within the LUD II area.

EPA ISSUE #1: "...there is insufficient information at this time to nullify the presumption that practicable alternatives to the proposed road are available."

ADOT RESPONSE TO EPA ISSUE #1: The ADOT reiterated that the only practicable alternative is the proposed project, based primarily on cost, and they provided further documentation to support this statement. The ADOT included a copy of a May 12, 2003, letter from the Executive Office of the President Council on Environmental Quality (CEQ) to Secretary of Transportation (Mr. Norman Minetta) regarding a project's "purpose and need" statement. The CEQ letter states, "In the case of a proposal intended to address transportation needs, joint lead or cooperating agencies should afford substantial deference to DOT agency's articulation of purpose and need." The letter continues to state that if involved agencies have problems with the purpose and need statement then they should raise those issues immediately and elevate them to higher level decision makers for resolution. The ADOT states, "EPA chose not to elevate the issue" so the DEIS, FEIS, and the Corps' application included the unchanged purpose and need statement.

The ADOT explained that the state and user costs were an inseparable part of the transportation problem that the project was trying to address. ADOT included a pie chart that showed the high cost to maintain and operate the State ferry system, \$136 million for 23 million miles traveled, versus the lower cost to maintain the State highways at \$72 million for 2.4 billion miles traveled. ADOT concluded that it cost \$5.91 per mile traveled to operate and maintain the ferry, and 3 cents per mile traveled to operate and maintain the State highways.

The ADOT also refuted the EPA allegation that costs cannot be considered in the purpose and need statement. The ADOT stated "nothing in the [404(B)(1) Guidelines nor in EPA memoranda precludes cost reduction in the project purpose, nor can EPA staff cite an EPA policy statement on this issue". Conversely, the ADOT included a June 11, 1999 letter from the EPA that was sent to the ADOT office in Fairbanks regarding the McCarthy Road in Wrangell-St. Elias National Park. The EPA letter states, "...we [EPA] may concur with a purpose and need statement for the McCarthy Road Improvement Project that indicates the following: Purpose: The purpose of the project is to provide improved surface access to McCarthy. Need: (1) to correct structural/ safety problems; (2) to reduce maintenance costs; and (3) to increase road capacity."

The ADOT also attached the EPA/Corps "Memorandum: Appropriate Level of Analysis Required for Evaluating Compliance with the Section 404(b)(1) Guidelines Alternatives Requirements." The ADOT quoted

section 3.b. of the memorandum that states, "The determination of what constitutes an unreasonable expense should generally consider whether the projected cost is substantially greater than the costs normally associated with the particular type of project." The ADOT notes that "nothing in these statements precludes consideration of operation costs" and the FEIS clearly states that cost is part of the current transportation problem.

CORPS RESPONSE TO EPA ISSUE #1: The Corps concurs that at the time of EPA's 404(q) letter that EPA's issue statement was correct. The Corps has since compiled sufficient information to allow for an independent evaluation of the alternatives' practicability. Our independent analysis of the alternatives and the practicability determination is found within this ROD. See III - OVERALL PROJECT PURPOSE, VI - ALTERNATIVES CONSIDERED, and VIII - ANALYSIS OF THE LEAST ENVIRONMENTALLY DAMAGING PRACTICABLE ALTERNATIVE.

EPA ISSUE #2: "The federal government pays for most capital costs, whereas the state government and transportation users pay for most maintenance and operating costs. Consequently, conditioning the overall purpose on reducing state and user costs tilts the playing field towards the proposed project because roads generally have higher capital costs and lower maintenance and operating costs, whereas ferries generally have lower capital costs and higher maintenance and operating costs. The Guidelines level this uneven playing field by considering cost per se in the alternative analysis, regardless of who pays for those costs."

CORPS RESPONSE TO EPA ISSUE #2: The Corps concurs that within the State of Alaska the Federal Government has been paying a large share of the capital costs on large transportation projects. The State of Alaska has been responsible for paying the maintenance and operation costs on these projects. It is the Corps' responsibility to take into consideration the applicant's stated purpose for the project when establishing overall project purpose. The Corps cannot be so restrictive that the applicant's proposal is the only possible alternative or so broad that it makes the search for alternatives meaningless. After considering the applicant's stated project purpose and need, and considering EPA's comments the Corps defined the overall project purpose. The Corps did not include "reduction of state and user costs for transportation in the corridor". The overall project purpose was defined as: "To provide improved surface transportation with increased capacity to meet demand, provide flexibility, improved opportunity for travel, and reduced travel time between the Lynn Canal communities of Juneau, Haines, and Skagway." See II - APPLICANT'S PROPOSED PROJECT, and III - OVERALL PROJECT PURPOSE, in this ROD.

EPA ISSUE #3: "EPA recommends that DA clearly articulate its rationale for determining which of the action alternatives pass the basic purpose test."

CORPS RESPONSE TO EPA ISSUE #3: The 'basic purpose' test applies to the discharge of dredge and fill material into special aquatic sites, and the proposed project includes the discharge of fill material into other waters of the U.S., such as the proposed marine discharges into intertidal and subtidal waters. Where the activity

associated with the placement of fill material in a special aquatic site (in this instance wetlands) does not require access or proximity to or siting within the wetland in order to fulfill its basic purpose (e.g. the activity is not water dependent) the Guidelines pose two rebuttable presumptions: 1) practicable alternatives not involving wetlands are presumed to be available, and 2) practicable alternatives not involving discharges to wetlands are presumed to have less adverse impact on the aquatic ecosystem. The basic purpose of a road is ground transportation; the basic purpose of bridge abutment is to support structural crossing of an area (in this case a waterway), e.g., a bridge; the basic purpose of a staging area is to provide a work space. A road does not need siting in special aquatic sites to fill the basic purpose of providing a transportation corridor for vehicles. While the ferry alternatives considered may be water dependent because the ferry uses water to reach other land, the Corps does not authorize ferry operations; nor does the Corps authorize bridges over navigable waters, only those discharges of dredged or fill material associated with bridge construction (e.g. bridge abutments, concrete poured for the pilings/piers) located in waters of the U.S. Only the ferry dock (the Corps would be authorizing the dock in waters of the U.S. for ferries) requires siting in wetlands because the wetlands, which must be crossed, are located in or adjacent to the waterway that the ferry would use. Bridge abutments may need to be near the water, if the bridge is crossing water; however, they do not require siting in waterways and can be pulled back from the water by making the bridge spans longer. None of the Corps authorized activities except the ferry terminals require access or proximity to, or siting within, a wetland to fulfill their basic purpose; therefore, they are not water dependent.

The definition of overall project purpose is used to determine if an alternative is practicable in light of the overall project purpose. The Guidelines define practicable to mean: "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purposes" [40 CFR 230.3(q)]. The Corps established the overall project purpose for the project. See III - OVERALL PROJECT PURPOSE, and Corps response to EPA Issue #2, in this ROD.

Section 10 of the Rivers and Harbors Act of 1899 applies to the construction of any structure in, under, or over any navigable water of the United States, the excavating from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters. The substantive evaluation criteria for this authority is the Corps' public interest review (33 CFR Part 320.4(a)) and NEPA.

EPA ISSUE #4: "Therefore, if DA determines that any of the other action alternatives are capable of achieving the basic project purpose, then any such alternative is also practicable." This statement followed a long narrative about how the EPA disagreed with the ADOT by including state (operation and maintenance) costs and user costs in their project purpose since the EPA believes only capital costs can be considered in the alternatives analysis.

ADOT RESPONSE TO EPA ISSUE #4: The ADOT stated in their response letter that the LEDPA is the proposed project, Alternative 2B. They explained that the ferry Alternatives (4A-4D) do not meet the project purpose and are not practicable based on cost. They stated that Alternative 3 would be "more environmentally damaging than Alternative 2B when considering the value of the aquatic resources that would be impacted."

CORPS RESPONSE TO EPA ISSUE #4: Because an alternative is capable of achieving the basic project purpose does not mean that it is automatically a practicable alternative. The practicability of an alternative is a separate question that must be answered, hence, the discussion found in VIII - ANALYSIS OF THE LEAST ENVIRONMENTALLY DAMAGING PRACTICABLE ALTERNATIVE, in this ROD. For an example one could propose a 51 mile road built on pilings in marine waters from Cascade Point to Katzehin as meeting the basic project purpose, providing a transportation corridor. However, the road on pilings alternative would not be practicable when costs were evaluated. The pilings alternative would end up being astronomically expensive. The Corps in its practicability determination and evaluation took costs into consideration. However, capital costs, construction costs, operation and maintenance costs, and life cycle costs were not a deciding factor in the practicability determination. The practicability determinations for the Project were made on whether the alternatives were available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purposes. Logistics and available technology were the deciding factors in this analysis.

The Corps completed a review and analysis of all alternatives as defined by the Guidelines, and found that the No Action Alternative and Alternatives 4A, 4B, 4C, and 4D all failed to increase capacity, and failed to provide increased flexibility, for travel between the Lynn Canal communities of Juneau, Haines, and Skagway. Therefore, these alternatives were not practicable in light of the Corps' overall project purpose.

Alternative 3 was found to adversely impact endangered species. The Corps concluded that the combined problems of meeting capacity; the increased logistical support requirements to manage two east side ferry terminals in Lynn Canal for the same run; the reduction in capacity of 9,575 vehicles in year one; the reduction in peak season capacity (May) and two weeks in April to a maximum of 336 vehicles daily; and the increasing failure to meet capacity over time all combined to render Modified Alternative 3 not practicable after taking into consideration cost, existing technology, and logistics in light of the overall project purposes. Logistics and available technology were the deciding factors in this analysis.

Alternative 2B has a permanent loss of 103 acres of waters of the U.S. Modified Alternative 2B has a permanent loss of 95 acres of waters of the U.S.

It was concluded that Modified Alternative 2B is the least environmentally damaging practicable alternative considering cost, existing technology, and logistics in light of the overall project

purpose. Logistics and available technology were the deciding factors in this analysis. For these reasons, Modified Alternative 2B is the LEDPA. See III - OVERALL PROJECT PURPOSE, VI - ALTERNATIVES CONSIDERED, and VIII - ANALYSIS OF THE LEAST ENVIRONMENTALLY DAMAGING PRACTICABLE ALTERNATIVE, in this ROD.

EPA ISSUE #5: "...if DA determines that any of the other action alternatives are practicable, then the proposed disposal sites for the discharge of dredged or fill material must be specified as failing to comply with the requirements of the [Section 404(b)(1)] Guidelines (40 CFR 230.12(a)(3)(i))."

CORPS RESPONSE TO EPA ISSUE #5: A disposal site analysis was completed for the Project. ADOT agreed that it was possible to reduce the footprint of the marine water waste disposal area from the 150 acres in Alternative 2B to 14.8 acres in Modified Alternative 2B. The waste rock disposal footprint was then restricted to locations "A & B" and "C & D". The 150 acre waste rock disposal area was reviewed by NMFS as part of the Corps PN. The 14.8 acre site is within the reviewed area. No EFH issues exist with the 14.8 acre site. In addition, waste rock from the road cuts was incorporated into the construction of the road prism. The design changes further reduced the volume of material that needed to be wasted in marine waters to 430,000 cy. No upland sites were found practicable for waste rock disposal. See VI - ALTERNATIVES CONSIDERED, Part C, in this ROD.

EPA ISSUE #6: "We also recommend that DA perform an independent evaluation of whether any of the action alternatives in the FEIS, or any combination or variation thereof, are practicable and less damaging."

CORPS RESPONSE TO EPA ISSUE #6: The Corps completed its own independent evaluation of the alternatives found in the FEIS. The Corps then completed a practicable analysis and determination in accordance with the Guidelines. See VI - ALTERNATIVES CONSIDERED Parts A, B, and C, and VIII - ANALYSIS OF THE LEAST ENVIRONMENTALLY DAMAGING PRACTICABLE ALTERNATIVE, in this ROD.

EPA ISSUE #7: "...EPA recommends that DA restate the project purpose by excluding any reference to state costs and user costs. We also recommend that DA perform an independent evaluation of whether any of the action alternatives in the FEIS, or any combination or variation thereof, are practicable and less damaging."

CORPS RESPONSE TO EPA ISSUE #7: The Corps agrees and defined the overall project purpose, excluding state and user costs. See Corps response to EPA Issue #2, #3, #4, #5, #6.

Special Conditions Recommended by the EPA:

The EPA recommended eight special conditions. The substance of the EPA's recommendations which are necessary to satisfy the public interest criteria, have been edited and/or reworded and would be incorporated into the Corps permit, if authorized, except where noted.

Suggested EPA Condition #1: The measures in the document⁶⁰, "Mitigation Commitments Relevant to Section 404 of the Clean Water Act" shall be followed.

CORPS RESPONSE TO EPA CONDITION #1: The Corps agrees to carry this condition. This condition is found in the compensatory mitigation special conditions. The use of in lieu fees is allowed by Corps and EPA mitigation policy. In lieu fees must be paid to a fund for which the Corps has a working agreement. This condition is in compliance with the April 10, 2008, Final Compensatory Mitigation Rule issued jointly by EPA, and the Corps. The new rule gives the Corps two years to work with and correct agreements completed prior to the April 10, 2008 rule. The Corps will review all in lieu fee agreements in Alaska in compliance with the new rule. See DA special conditions #4a-h, #32.

Suggested EPA Condition #2: "Replace the proposed road fill between the Antler River and the Lace River with a causeway on pilings."

ADOT RESPONSE TO EPA CONDITION #2: The ADOT stated that it would be cost prohibitive to bridge the entire 5,700-foot wide peninsula as a bridge would cost an additional \$25 million at \$4,400 per foot.

CORPS RESPONSE TO EPA CONDITION #2: This condition will not be carried on the Corps' permit. The Corps believes that adding a piling supported causeway for the whole peninsula has little wetland benefit. The original wetland studies and the 1997 DEIS, used existing NWI maps for most of the project area, but there were several locations where delineations were done. It was decided that field wetland delineations should be made at several locations to verify the existing NWI maps:

** Slate Creek - there were two determinations, one east of the creek and one west of the creek.*

** Antler River mouth - there were two determinations east of the river.*

** Lace/Berners River delta - one determination on an island.*

** Katzehin River mouth - there was one determination at the proposed bridge crossing of a special aquatic site, and two determinations north of the river. The wetland field determinations for these four areas were performed during the summer of 1994 in accordance with methods presented in the 1987 Corps of Engineers Wetlands Delineation Manual. Based on this delineation data ADOT agreed to extend the proposed bridges on the peninsula. ADOT agreed to extend the proposed bridges, and bridge an additional (anadromous) stream that was discovered during the wetland delineation. With the plan change only 0.1 acres of wetland would be filled on the peninsula. ADOT submitted revised drawings to the Corps.*

Suggested EPA Condition #3: If the Antler River to Lace River causeway is found not practicable, "then extend the proposed bridges for the Antler and Lace Rivers so as to avoid placing fill material in any adjacent wetlands."

⁶⁰ The referenced document was an attachment to the application, submitted to the Corps on March 3, 2006.

ADOT RESPONSE TO EPA CONDITION #3: ADOT stated that the project, as originally applied for, would have resulted in impacting 2.6 acres of wetlands. The ADOT recently delineated this area and found that the wetlands were not as extensive as shown on the National Wetland Inventory maps. In addition, ADOT agreed to extend the bridges and bridge an additional (anadromous) stream that was discovered during the wetland delineation so that only 0.10 acres of wetland would be impacted on the peninsula. The ADOT submitted revised drawings and delineation sheets to the Corps showing this change.

CORPS RESPONSE TO EPA CONDITION #3: We agree to carry this condition. See DA special condition #11.

Suggested EPA Condition #4: "Install one additional wildlife underpass at the most appropriate location between the proposed Katzehin River Bridge and the proposed Katzehin ferry terminal."

ADOT RESPONSE TO EPA CONDITION #4: The ADOT states that the Katzehin River Bridge would extend at least 100 feet inland to provide a wildlife underpass. However, they note that this area, which is all uplands, is a known brown bear travel corridor so they have agreed to install an additional underpass once the Alaska Department of Fish & Game (ADF&G) determines the best location for it.

CORPS RESPONSE TO EPA CONDITION #4: The Corps has determined that this condition would not mitigate for impacts to waters of the United States, and therefore would not be carried on the Corps permit.

Suggested EPA Condition #5: Applicant should work with the communities of Juneau, Haines, and Skagway to develop a beneficial use for the 1.4 million cy of excess waste rock instead of wasting it into deep water.

ADOT RESPONSE TO EPA CONDITION #5: The ADOT stated that it would be cost prohibitive to haul the waste rock to an upland area in the above communities as it would cost \$38 million (\$27/cy) to barge, unload, transfer, and pile, which is 3-10 times more than rock available in those communities. However, they did state that it would be practicable to barge the rock for a concurrent marine project so they will work with the above communities as well as the communities of Gustavus and Hoonah to determine if there is such a project. If not, the large diameter rock would be placed randomly below the -10 foot contour so that it will add habitat complexity, creating irregular surfaces and many surfaces, and creating vegetated shallows. They note that the "NMFS has concurred that side casting in the areas designated will mimic natural slides in talus areas" so they did not request alteration of the plan or any compensatory mitigation for the rock disposal.

CORPS RESPONSE TO EPA CONDITION #5: Modified Alternative 2B changed disposal to two confined disposal areas in Lynn Canal. The confined disposal site reduces the acreage of filled marine water

from 150 acres down to 14.8 acres. See VI - ALTERNATIVES CONSIDERED, Part C, in this ROD. See DA special condition #27.

Suggested EPA Condition #6: Adjust the priority list for the use of in lieu fees for compensatory mitigation by replacing the Pullen Creek project with the Strawberry Creek fen preservation project.

ADOT RESPONSE TO EPA CONDITION #6: The ADOT agreed that the Pullen Creek restoration project should not be as a high priority as the Strawberry Creek preservation project, but they will disburse mitigation funds to whatever project(s) the Corps permit requires.

CORPS RESPONSE TO EPA CONDITION #6: The Corps is not going to carry this condition. The existing in lieu fee agreements with Seal Trust and the Conservation Fund dictate how in lieu funds are to be spent. This is in compliance with the April 10, 2008, Final Compensatory Mitigation Rule issued jointly by EPA and the Corps.

Suggested EPA Condition #7: Require an additional in lieu fee payment of \$440,000 to provide compensatory mitigation for the 70 acres of wetland impact on a 2:1 basis.

ADOT RESPONSE TO EPA CONDITION #7: The ADOT agreed to provide compensatory mitigation for wetland impacts on a 2:1 basis, but they disagreed with the amount of in lieu fees. ADOT explained that the in lieu fee valuation in the FEIS for the 70 acres of wetland impacts was \$235,200, which was based on the value the ADOT used for lower value wetlands on other transportation projects in southeast Alaska. The original value was \$2,800 per acre, but this was increased 20% to \$3,360 per acre to account for inflation and this was "based on an isolated forested wetland value of \$1,680 per acre." They further state, "Resource agency staff have pointed out that while much of the palustrine wetlands that would be impacted are of lower value, forested wetlands adjacent to anadromous fish streams are higher in value, as are the scrub/shrub wetlands near Sawmill Creek." They stated the average cost of higher value parcels in southeast Alaska is \$5,520 per acre or \$10,500 per acre on a 2:1 basis. ADOT said they would use this value for the 13.7 acres of high value wetland impacts (0.7 acre at Sawmill Creek and the remainder at Slate Creek and Cove) resulting in a partial in lieu fee of \$143,850. They stated that final design has reduced the other wetland impacts to 51 acres, which would result in a partial in lieu fee of \$171,360 (at \$3,360 per acre) for a total in lieu fee of \$315,200 for wetland impacts. This would be added to the previously committed in lieu fee of \$780,000 for marine water impacts.

CORPS RESPONSE TO EPA CONDITION #7: The use of in lieu fees is allowed for in the April 10, 2008, Final Compensatory Mitigation Rule issued jointly by EPA and the Corps. The Corps agrees to carry a condition requiring in lieu fee mitigation to compensate for wetland losses. The Corps has determined an in lieu fee amount of \$440,000 is appropriate for the freshwater wetland impacts of the project. The calculations follow: 65.71 acres of low value wetlands at \$3,360 an acre at a two to one ratio equals \$441,571. This calculation is equal to the value requested by EPA. Earlier Corps calculations for ILF included 0.2 acre of marine fill which

was also included in the EFH ILF numbers. Earlier calculations by the Corps showed a total of \$452,000. To avoid double charging for the 0.2 acre (\$12,000) this value was subtracted from the \$452,000. The marine and freshwater losses have been separated within the special conditions. The \$440,000 ILF figure can be used for wetland restoration, enhancement, preservation or land acquisition for the unavoidable adverse impacts to fresh water aquatic resources. See DA special condition #4a.

FHWA has agreed to pay an additional \$780,000 to compensate for EFH marine loss. "Mitigation Commitments Relevant to Section 404 of the Clean Water Act" was attached to an ADOT letter of March 3, 2006. This compensation was discussed in the FEIS, dated January 18 2006. Page 4-57 of the FEIS quotes NMFS' EFH conservation recommendation to "Provide compensatory mitigation to compensate for the loss of intertidal, subtidal habitats" and states a commitment to the compensatory mitigation plan. Page 5-11 of the FEIS details the commitment for compensatory in lieu fee for unvegetated intertidal/subtidal fills. FHWA and ADOT accept the in lieu fee acreage calculations. The marine EFH requirements have been added as a special condition. See DA special condition #4b.

Special Conditions #4c-h address total ILF requirements for the 404 permit and how to deal with potential DA permit modifications.

Suggested EPA Condition #8: "...incorporate the revised compensatory mitigation plan by reference as a special condition of the 404 permit."

CORPS RESPONSE TO EPA CONDITION #8: The Corps agrees that compensatory mitigation is appropriate and an in lieu fee payment of \$444,000 shall be required. The applicant has also agreed to an Essential Fish Habitat mitigation plan found in the document "Mitigation Commitments Relevant to Section 404 of the Clean Water Act." The applicant has agreed to minimization measures, project changes, and to follow best management practices during construction. The fills in waters of the U.S. were further minimized by Modified Alternative 2B by reducing open water disposal, and wetland fill. The total ILF amount required under Section 404 of the Clean Water Act for the Project is found in two parts: \$440,000 (wetlands)) + \$780,000 (EFH marine water) = \$1,220,000. No further compensatory mitigation beyond these requirements is required. See DA special condition #4.

Email, dated August 27, 2007, from EPA:

The EPA stated: "...that absent any new and compelling information, EPA's comments on modified Alternative 3 remain the same... If the Corps provides new information to EPA in response to our comments, we will consider such information and may provide additional comments to the Corps at that time."

Corps Response to the EPA email: The Corps initiated this contact on August 20, 2007, by asking for EPA's position on 'modified alternative 3...' The Corps sent this email to the EPA:

"The Corps published a Public Notice for this project on April 21, 2006. The U.S. Environmental Protection Agency (EPA) responded to the Corps on June 12, 2006, expressing their concerns...: 'EPA generally agrees with these findings, with the following exceptions. The applicant's proposed conservation measures for Alternatives 4B and 4D would allay EPA's concerns about potential impacts on herring spawning in Berners Bay. Alternatives 4B and 4D include ferry service from Berners Bay in the summer and from Auke Bay in the winter. To avoid impacts on herring spawning, ferry operations in Berners Bay would not begin until after the herring spawning period. The same conservation measures could be applied to Alternative 3 (i.e., ferry service from Berners Bay year round, except ferry service from Auke Bay during the 2-3 week herring spawning period). Under this scenario, Alternative 3 is clearly less damaging to the aquatic ecosystem than Alternative 2B.'

The Corps used this confirmation by EPA to formulate Modified Alternative #3. See ALTERNATIVES CONSIDERED Part A., of this ROD.

U.S. Fish and Wildlife Service:

Comment letter, dated May 18, 2006. The ADOT did not provide a written response to this USFWS letter. The USFWS stated their opposition to the proposal and to Alternatives 2, 2B and 2C⁶¹, and their support for the less environmentally damaging alternatives (1, 4A, and 4C). The USFWS addressed these concerns by recommending the following special conditions⁶².

Suggested Condition #1: *Require "compensatory mitigation for the loss of the 70 acres [of wetlands] in the form of habitat protection/reclamation (e.g. habitat acquisition through in lieu fees or permanent road obliteration in high value brown bear habitat)."*

Suggested Condition #2: *If the above condition is not included in any permit issued then the Corps is to notify the USFWS "in accordance with the local procedures agreed to by our respective agencies."⁶³*

CORPS RESPONSE TO USFWS Conditions #1 and #2: The Corps agrees to carry a condition for in lieu fee compensatory mitigation. See EPA condition #7 response for the calculations. Therefore, Condition request #2 does not apply. See DA special condition #4a-h.

National Marine Fisheries Service:

Comment letter dated July 6, 2006. The NMFS stated that the proposal "...has the potential to affect the ecologically important habitat of Berners Bay. Berners Bay is a regionally important

⁶¹ Alternatives 2 and 2C were eliminated prior to publication of the FEIS.

⁶² The USFWS letter, dated May 18, 2006, pages 1 and 2.

⁶³ Since the USFWS did not include any Section 404(q) language in their comment letter, the 'local procedures' indicated would not require the Corps' project manager to coordinate with the USFWS regarding the Corps' response to the USFWS' request. "Local procedures" are an outgrowth of Section 404(q) if there is no Section 404(q) language then no local procedures are required.

estuary that supports a variety of ecological functions for the natural communities of Lynn Canal and northern southeast Alaska." The NMFS offered their assistance to the Corps in evaluating other practicable alternatives "...that would achieve the overall project purpose and minimize adverse impacts to the aquatic ecosystem."

The NMFS also recommended two modifications of the Essential Fish Habitat mitigation plan, which is found in the document "*Mitigation Commitments Relevant to Section 404 of the Clean Water Act.*" NMFS stated that they no longer support funding for the Pullen Creek restoration project and noted that "...other important ecological wetland functions that will be lost or reduced as a result of wetland fill remain unmitigated..." with the current proposed plan.

Comment letter dated August 24, 2007. The Corps requested the NMFS' position with respect to a Modified Alternative 3, in a letter dated August 20, 2007:

"A modified Alternative 3.....would appear to be less damaging to the aquatic environment, and may be practicable. Therefore, what would be your agency's position with respect to the EPA's suggested modification of Alternative 3? That is, should ADOT select Alternative 3 instead of Alternative 2B, and the alternative was modified to avoid herring spawning areas and times within Berners Bay, would the National Marine Fisheries Service view this as preferable or not, and why? For example, would NMFS totally object to a modified Alternative 3?"

The NMFS reminded the Corps that in the NMFS' letter dated July 6, 2006, that the NMFS had

"...offered to 'assist the Corps in evaluating other alternatives determined to be practicable that would achieve the project purpose and minimize adverse impacts to the aquatic environment'."

Their letter went on to state that the ADOT had addressed this issue in the SDEIS, dated March 21, 2005:

"This alternative could be combined with components of other alternatives to develop a blended alternative that is less damaging to EFH."

The NMFS' letter also stated "A modification of Alternative 3 to avoid herring spawning areas and times within Berners Bay could reduce potential adverse effects to living marine resources." The NMFS' letter went on to remind the Corps that should the ADOT reselect a new alternative, both the EFH and the ESA would need to be reevaluated as appropriate.

CORPS RESPONSE TO NMFS: ESA consultation was completed for this project. (See ESA discussion immediately below.) The Corps also completed a detailed review of the alternatives for the proposed project including Modified Alternative 3 and Modified Alternative 2B. See VI - ALTERNATIVES CONSIDERED, VIII - ANALYSIS OF THE LEAST ENVIRONMENTALLY DAMAGING PRACTICABLE ALTERNATIVE, in this ROD. See DA special condition #4, #31, and #32.

ENDANGERED SPECIES ACT (ESA) CONSULTATION PROCESS:

The Corps initiated⁶⁴ informal consultation pursuant to Section 7 of the ESA with the NMFS, stating that the Corps had determined that the project was not likely to affect threatened and endangered species (humpback whale and Stellar sea lions) within the project area [Lynn Canal and Berners Bay].

Comment letter dated May 10, 2006, from the Southeast Alaska Conservation Council (SEACC), the Auk Kwaan (a native tribe), the Lynn Canal Conservation, and the Sierra Club refuted the above statement. This letter was a "Notice of Intent to sue under the ESA and Administrative Procedure Act for failure to initiate formal consultation with regard to Stellar sea lion critical habitat in the Juneau Access Improvement Project Area" and was addressed to the Corps and the USFS. The letter included a May 10, 2006, letter to the FHWA informing them that litigation⁶⁵ would be initiated if they do not complete formal consultation regarding the project's impacts upon Stellar sea lion critical habitat. They stated that the ESA regulations require formal consultation if a federally funded or authorized project "...may affect' critical species or habitats." They noted that the FEIS states that "...the area of critical habitat around Gran Point 'includes all the land and water within a 3,000-foot radius' of the haul out..." and that the proposed road would come within 300 feet of the haul out. Further, they stated that the NMFS has expressed uncertainty on the effectiveness of the proposed mitigation measures by NMFS stating that they have "...limited experience' with the effects of construction noise 'and the likely response by Stellar sea lions to human activity in such close proximity to such an important haul out.'" The SEACC letter concluded that this clearly shows that the project "may affect" the Stellar sea lion and that formal consultation is required by the ESA. The SEACC letter to the Corps states, "Similarly, the ESA mandates formal consultation before the Army Corps of Engineers decides whether to issue a permit pursuant to 404 of the Clean Water Act."

The Corps wrote a letter to the NMFS on June 27, 2006, regarding the Corps' ESA responsibilities. The Corps stated it "...reviewed the biological assessment for the Stellar sea lion prepared by the FHWA and the Stellar sea lion technical report (Appendix S) in the EIS and find them acceptable for Corps regulatory purposes and our ESA responsibilities." The Corps noted that "...12 conditions have been agreed to by ADOT and the FHWA to avoid potential impacts to humpback whales and Stellar sea lions." The Corps requested the NMFS provide their written ESA comments on this project and a statement on whether formal consultation pursuant to Section 7 of the ESA was required.

However, on December 29, 2006, Golder Associates⁶⁶ prepared and submitted to the ADOT (who subsequently provided the Corps with a

⁶⁴ via Corps public notice, dated April 21, 2006

⁶⁵ On August 16, 2006, the SEACC and other environmental organizations filed suit in the Federal District Court of Alaska against the FHWA and the USFS for violations of the ESA and other environmental laws.

⁶⁶ Golder Associates, Incorporated, 1750 Abbott Road, Suite 200, Anchorage, AK 99507-3443.

copy), a document entitled Final Report, Lynn Canal Highway, Phase I, Zone 4 Geotechnical Investigation. This report indicated the potential presence of a hazard to the road alignment at Gran Point, one of the Steller sea lion haul out areas. This new information might have had substantial consequences on the alignment of the proposed road, and needed to be addressed. This prompted NMFS to request that the FHWA and the Corps each revisit their respective biological assessments. In response, the FHWA responded to NMFS that FHWA would respond to NMFS' request as the lead Federal agency and on behalf of the Corps. FHWA provided a response concerning the Golder report to NMFS with respect to ESA on June 17, 2007.

The NMFS responded to the FHWA in a letter dated August 7, 2007, stating that "With respect to the Corps' Federal responsibilities pursuant to the ESA, NMFS concurs with the Corps' determination that the activities associated with the Project are not likely to adversely affect the endangered humpback whale, the threatened eastern distinct population segment (eDPS) of Steller sea lion, the endangered western distinct population segment (wDPS) of Steller sea lion, or Steller sea lion critical habitat within the action area." The letter went on to state, "This concludes NMFS consultation with the Corps under section 7 of the ESA." The letter did not convey any request for special conditions or recommendations to either the Corps or to the FHWA.

C. STATE: Alaska Department of Natural Resources (ADNR):

The only comment letter received from the ADNR was the May 19, 2006, letter from the State Historic Preservation Officer (SHPO). The SHPO stated that the project was located in three historic districts and that two linear features (Jualin Mine Tram and Comet/Bear/Kensington Railroad) are eligible for inclusion in the National Register of Historic Places would be intersected by the project. They stated this was previously stated in an October 5, 2005, letter addressed to the FHWA and to the ADOT and that the SHPO concurred that these properties would not be adversely affected provided they were avoided by having an archaeologist flag them prior to work and the properties were documented with photographs by the FHWA after the project is completed. The ADOT confirmed in their June 13, 2006, response letter that the SHPO recommendations would be followed.

CORPS RESPONSE TO ADNR: FHWA has agreed to comply with all of SHPO's requirements.

D. CITY AND BOROUGH OF JUNEAU:

The City and Borough of Juneau (CBJ) General Assembly⁶⁷ found the project to be "consistent with the CBJ Land Use Code and the CBJ Comprehensive Plan" with several conditions previously recommended by the CBJ Planning Commission.

Condition #1: Underpasses will be included for the two identified major brown bear migration corridors on the isthmus between the Lace and Antler Rivers.

⁶⁷ July 29, 2006.

CORPS RESPONSE TO CBJ CONDITION #1: Underpasses for brown bears will not be required on the Corps permit. Migration corridor locations for bears are more appropriately controlled by ADF&G, USFS, FHWA, and CBJ.

Condition #2: All anadromous fish streams will be crossed by bridges. Streams that can be crossed with 130-foot or shorter bridges will not have any structures or fill in the stream channel.

CORPS RESPONSE TO CBJ CONDITION #2: This condition will be carried by the Corps. The aquatic resources (anadromous fish) at risk are a direct result of the Corps permit action. See DA special condition #5.

Condition #3: In appropriate habitat, nesting surveys for Trumpeter Swans and Queen Charlotte Goshawks will be conducted prior to construction. Clearing will be avoided in the vicinity of active nests.

CORPS RESPONSE TO CBJ CONDITION #3: The Corps will not require surveys of species that are not indentified as endangered or part of EFH. The survey is more appropriately handled by USFS, USFWS, and the applicant.

Condition #4: ADOT will fund wildlife monitoring studies to assess impacts and manage populations for mountain goats, moose, bear, wolverines, eagles, and sea lions. If goat monitoring identifies areas where pregnant nannies congregate in late winter or early spring, ADOT will coordinate with the Alaska Department of Fish and Game to avoid construction from January through April in those areas to the extent feasible.

CORPS RESPONSE TO CBJ CONDITION #4: The Corps will not make it part of their permit to require ADOT to fund wildlife monitoring studies to assess impacts and manage populations for mountain goats, moose, bear, wolverines, eagles, and sea lions. Wildlife surveys are more appropriately handled by USFS, USFWS, FHWA and ADOT. Study requirements mandated by the ESA act are part of conditions proposed by the Corps.

Condition #5: No construction will occur in April or May within one mile of identified harbor seal haul outs.

CORPS RESPONSE TO CBJ CONDITION #5: The Corps will not carry this condition. This condition was not recommended by NMFS, the recognized expert on marine mammals. The Corps defers to NMFS in this matter.

Condition #6: ADOT will coordinate with the USFWS to avoid impacts on eagle nesting trees. No construction will occur within 330 feet of an eagle nest tree, and no blasting will occur within 0.5 mile of an eagle nest, during the March 31 to May 31 nest selection period unless agreed to by the USFWS. If a nest is active, no construction blasting will occur within these distances until after August 31, unless the USFWS approves a plan to avoid impacts while operations continue, and ADOT has obtained variances from the CBJ.

CORPS RESPONSE TO CBJ CONDITION #6: The Corps agrees to carry a condition on Eagle avoidance on our permit. An Eagle condition was written in concert with USFWS, the recognized Federal expert on eagles. The Corps defers to the USFWS on how to write the eagle condition. See DA special condition #6.

Condition #7: No in-water work is permitted between March 15 and June 15 in anadromous waters.

CORPS RESPONSE TO CBJ CONDITION #7: The Corps agrees to carry a timing window for in water work. The USFWS and ADF&G have established such a timing window. These experts have recommended a window of April 15 to June 15. The Corps defers to the experts in this matter and will use the window of April 15 to June 15. See DA special condition #7.

Condition #8: The Best Management Practices in CBJ 49.70.1080(b)(7)(A) through (G) shall be employed during construction of the project.

CORPS RESPONSE TO CBJ CONDITION #8: This condition will not be carried by the Corps as written. Best Management Practices have been established by FHWA for the road construction. The Corps will require the Best Management Practices of FHWA to be followed for the Project. See DA special condition #9.

Condition #9: The road alignment in Berners Bay provides for a shoreline buffer of naturally-occurring trees and vegetation between 50 and 1,000 feet (and more) wide. This alignment shall be retained and in no case shall the buffer be less than 50 feet.

CORPS RESPONSE TO CBJ CONDITION #9: The Corps will not carry this condition. The Corps does not have jurisdiction for fill placed in upland areas. Only a portion of the route in Berners Bay is within Corps jurisdiction. ADOT has designed and routed the road to provide buffers around Berners Bay. The Corps agrees that placing fill in Berners Bay under Corps jurisdiction would be a disposal of fill in waters of the United States. Disposal of fill in Berners Bay will not be permitted, See response to Condition #10 immediately below. The Corps will leave routing of the road to the land manager and land owner in uplands. See CBJ Condition #10.

Condition #10: No material will be side cast into Berners Bay during construction.

CORPS RESPONSE TO CBJ CONDITION #10: This condition will be carried by the Corps. This permit condition is warranted and supported by the comments of EPA. The waters of Berners Bay have been labeled an "Area of National Importance" (ARNI) by EPA. EPA determined this area to have special and unique aquatic resources. The disposal of fill in the intertidal or subtidal area would put this special area at risk. Therefore, fill placement or waste rock disposal in the Berners Bay ARNI will not be authorized. See DA special condition #8.

Condition #11: Multi-span bridges will be used across the Lace and Antler Rivers at the head of Berners Bay. These bridges will be constructed with piers spaced at least 130 feet apart to minimize impacts to water flow and circulation patterns and will be designed to avoid salt marshes and inter-tidal flats.

CORPS RESPONSE TO CBJ CONDITION #11: The Corps will not carry this condition on the permit. ADOT has committed to bridge all anadromous streams on the whole Project. A jurisdictional determination for this area was completed to further avoid wetlands. The project, as originally applied for would have resulted in impacting 2.6 acres of wetlands in this area. An on site delineation was performed according to the 1987 manual for this area. The delineation found that the wetlands were not as extensive as shown on the National Wetland Inventory maps. In addition, ADOT agreed to extend the bridges here and bridge an additional (anadromous) stream that was discovered during the wetland delineation. Only 0.10 acres of wetland would be filled on the peninsula. EPA also expressed concern for this area, and the wetland delineation was a performed to avoid and minimize wetland fill.

Condition #12: No road pullouts and road facilities, such as restrooms, will be constructed in wetland areas. All construction camps, staging sites, borrow pits, and waste areas between Slate Creek and Sweeny Creek will be located on upland areas.

CORPS RESPONSE TO CBJ CONDITION #12: The Corps will not carry this condition on the permit. The Corps required ADOT to avoid and minimize wetland fill for the Project. A rigorous look at the proposal has been completed by the Corps to find compliance with the Guidelines. The wetlands proposed to be filled within Modified Alternative 2B are the minimum required to complete the Project. Road fills were restricted to the road prism. Passing lanes, road width, and cuts (with backfill) in wetlands were proposed to meet FHWA safety standards.

Condition #13: ADOT will not construct boat launch ramps in any location along the highway route.

CORPS RESPONSE TO CBJ CONDITION #13: The Corps will not carry this condition on the permit. ADOT would have to apply to the Corps for a permit to construct a boat launch below High Tide Line. There is no boat launch as part of the Corps permit application.

Condition #14: A barrier shall be placed along the road segments crossing the Antler and Lace Rivers and adjacent wetlands where necessary to prevent access to tide flats by off-road vehicles.

Corps Response to CBJ Condition #14: The Corps will not carry this condition on the permit. The Corps does not regulate or have jurisdiction for off road vehicles. The Corps will leave off road vehicle regulation to the land manager.

Condition #15: The location of wildlife underpasses shall be field verified by the ADF&G and USFS experts before locations are finalized.

Corps Response to CBJ Condition #15: The Corps will not carry this condition on the permit. The Corps does not regulate or have jurisdiction for underpasses. The Corps will leave the location, design and the need for animal underpasses to the land manager, USFWS, and ADF&G. All of the bridges over the anadromous streams will act as underpasses for wildlife.

Condition #16: In-water construction shall be limited to times when eulachon are not migrating or spawning in the area, and impacts are minimized to migrating adult salmon, at ADF&G's discretion.

Corps Response to CBJ Condition #16: The Corps agrees to carry a timing window. The USFWS and ADF&G have established such a timing window. The experts have asked for a window from April 15 to June 15. The Corps defers to the experts in this matter and will use this April 15 to June 15 timing window. See DA special condition #7.

Condition #17: ADOT shall work with ADF&G and NMFS to design a monitoring program that will determine the impacts of the bridges and road construction and use on the east side of Berners Bay and in the Antler River.

Corps Response to CBJ Condition #17: The Corps will not carry this condition on the permit. FHWA has agreed to pay NMFS for impact monitoring and to compensate for EFH losses. The Corps will carry a condition to require in lieu compensation, and an update requirement on the NMFS compensation program. See DA special condition #4a-h.

Condition #18: To mitigate for the loss of wetland functions, including water flows and quality, water retention devices, oil/water separators and/or Best Management Practices that mimic current flow patterns shall be designed and installed along the east shoreline of Berners Bay to act as filters to clean the water.

Corps Response to CBJ Condition #18: The Corps will not carry this condition on the permit. The Corps instead has the authority to allow for compensation of wetland losses by the use of in lieu fee payments. The use of in lieu fees is allowed by the April 10, 2008, Final Compensatory Mitigation Rule issued jointly by EPA and the Corps. The Corps agrees to carry a condition requiring in lieu fee mitigation for wetland losses. The Corps has determined an in lieu fee amount of \$440,000 is appropriate for the impacts of the project. In addition, FHWA has agreed to pay \$780,000 to compensate for EFH marine loss. See DA special condition #4a-h.

Condition #19: The Measures to Minimize Harm identified in the April 3, 2006, FHWA Record of Decision on the Juneau Access Road shall be incorporated as elements of the project.

Corps Response to CBJ Condition #19: The Corps agrees to carry this condition. See DA special condition #9.

The following six conditions were approved in the July 12, 2006, CBJ Board of Adjustment "variance request to allow construction of Juneau Access Road within 330 feet of 3 trees with eagle nests."

Condition #1: Construction activities in the vicinity of the bald eagle nests will be coordinated with the United States Fish and Wildlife Service to determine the need for alignment changes (for newly discovered nests), blasting plan changes, or other measures to avoid impacts to eagles.

Condition #2: On-the-ground nest surveys will be conducted before clearing takes place to confirm the location of trees with eagle nests.

Condition #3: No construction will occur within 330 feet of an eagle nest, and no blasting will occur within 0.5 mile of an eagle nest during March 1 to May 31 nest selection period unless agreed to by the United States Fish and Wildlife Service. If a nest is active, no construction or blasting will occur within these distances until after August 31, unless the United States Fish and Wildlife Service approves a plan to avoid impacts while operations continue.

Condition #4: In areas where clearing occurs to within 100 feet of a nest tree, Permittee and the United States Fish and Wildlife Service will jointly assess the potential for windthrow and Permittee will stabilize the tree or adjacent trees, if determined.

Condition #5: During construction, Permittee and the United States Fish and Wildlife Service will assess the sufficiency of natural screening between the highway and any eagle nests below the elevation of the road within the 330-foot zone. Additional screening will be developed, if necessary.

Condition #6: Permittee will continue to fund the United States Fish and Wildlife Service's aerial surveys for a period of five years to assess the impact, if any, of the project on the Lynn Canal bald eagle population.

CORPS RESPONSE TO CBJ CONDITIONS #1-#5: CBJ conditions apply only within the CBJ boundary. Project construction extends beyond the CBJ boundary. To ensure eagle protection beyond the CBJ boundary one condition was written for bald eagles and will be carried on the Corps permit: "Permittee shall coordinate with the U.S. Fish & Wildlife Service (USFWS) to avoid impacts on eagle nesting trees, in accordance with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Permittee shall also abide by the National Bald Eagle Management Guidelines at <http://www.fws.gov/migratorybirds/baldeagle.htm>." See DA special condition #6.

CORPS RESPONSE TO CBJ CONDITION #5: This condition will be carried by the Corps. The surveys of the eagles will ensure that the species is not adversely impacted by the Project. The bald eagle is not a listed or candidate species under the Endangered Species Act in Alaska. However, the Bald Eagle Protection Act of 1940

prohibits the disturbance of eagles and places enforcement of the act with the USFWS. See DA special condition #10.

E. ORGANIZATIONS and COMPANIES

Southeast Alaska Conservation Council [SEACC].

Comment letter dated May 10, 2006. SEACC had the following statement: "On May 10, 2006, the undersigned groups submitted a 60-day notice letter pursuant to section 11(g) of the Endangered Species Act (ESA), 16 U.S.C. § 1540(g), to FHWA and NMFS. That letter explains that FHWA violated the ESA and the Administrative Procedure Act, 5 U.S.C. § 706, by failing to initiate formal consultation with regard to Steller sea lion critical habitat in the Project area."

Comment letter dated June 12, 2006⁶⁸. SEACC commented that the Corps public notice was premature since project designs are incomplete so the Corps cannot grant a permit until final plans become available. SEACC also contended that the Corps had not entered into consultation pursuant to the Endangered Species Act (ESA)⁶⁹, nor had the Corps adequately considered less environmentally damaging practicable alternatives to the project.

SEACC stated that "To grant a permit on the basis of the information provided in the application would violate not only the Clean Water Act, but also the National Environmental Policy Act and the Endangered Species Act. The Corps must deny the permit application."

Issue #1: "Because the Auke Bay ferry Alternatives [1, 4A, and 4C] are less environmentally damaging practicable alternatives, the Corps cannot grant a Section 404 permit for the proposed road."

Issue #2: "Granting a Section 404 permit is not in the public interest."

Issue #3: "The mitigation measures proposed in the permit application are inadequate."

Issue #4: "The Corps cannot approve a permit application based on incomplete designs."

Issue #5: "The Corps cannot rely on the Environmental Impact Statement prepared by the Alaska Department of Transportation and approved by the Federal Highway Administration."

Issue #6: "Granting a Section 404 permit for the Project will impact designated critical habitat for Stellar sea lions, and the Corps must consult with NMFS."

Issue #7: "ADOT's application for a Section 404 permit for the Project does not meet the requirements of the Clean Water Act,

⁶⁸ SEACC Letter, dated June 12, 2006, with attachments.

⁶⁹ See IX.2.B, Endangered Species Consultation Process, above.

NEPA, or the Endangered Species Act. The Corps must deny ADOT's permit application."

CORPS RESPONSE TO SEACC'S JUNE 12, 2006 LETTER, WITH RESPECT TO THE SEVEN ISSUES ABOVE: The Corps determined that the Department of the Army permit application received from ADOT was complete in accordance with 33 CFR Part 325. The public notice solicited input from the public, private, and institutional sectors on the proposed DA permit application. FHWA, as the lead federal agency, initiated ESA consultation with NMFS for the project. In addition, the Corps sent a letter to the NMFS to confirm that FHWA had completed consultation pursuant to the Endangered Species Act. NMFS responded to FHWA in a letter dated August 7, 2007, stating that "With respect to the Corps' Federal responsibilities pursuant to the ESA, NMFS concurs with the Corps' determination that the activities associated with the Project are not likely to adversely affect the endangered humpback whale, the threatened eastern distinct population segment (eDPS) of Steller sea lion, the endangered western distinct population segment (wDPS) of Steller sea lion, or Steller sea lion critical habitat within the action area." The letter went on to state, "This concludes NMFS consultation with the Corps under section 7 of the ESA." The Corps completed all Essential Fish Habitat consultation with NMFS. FHWA agreed to pay \$780,000 to compensate for EFH marine loss and completed a document "Mitigation Commitments Relevant to Section 404 of the Clean Water Act", attached to an ADOT letter of March 3, 2006. This compensation was discussed in the FEIS, dated January 18 2006. Page 4-57 of the FEIS quoted NMFS' EFH conservation recommendation to "Provide compensatory mitigation to compensate for the loss of intertidal, subtidal, and wetland habitats" and stated a commitment to the compensatory mitigation plan. The Corps completed an independent review of all of the alternatives and an analysis of the environmental impacts of the project, and then determined compliance with the 404 (b)(1) guidelines. There are five alternatives described in the FEIS, plus the Corps' Modified Alternative 3, and Modified Alternative 2B which would be less environmentally damaging than the Alternative 2B. Alternative 3, Modified Alternative 3, 4A, 4B, 4C, and 4D, all failed to satisfy one or more of the components of the overall project purpose. It was concluded that Modified Alternative 2B was the least environmentally damaging practicable alternative considering cost, existing technology, and logistics in light of the overall project purpose. Logistics and available technology were the deciding factors in this analysis. For these reasons, Modified Alternative 2B is the LEDPA. The Corps was a cooperating agency in the preparation of the EIS and the Corps used the data, information and adapted the FEIS for the Project except for the 404(b)(1) draft analysis found in Appendix X of the FEIS completed by FHWA. See III - OVERALL PROJECT PURPOSE, VI - ALTERNATIVES CONSIDERED, and VIII - ANALYSIS OF THE LEAST ENVIRONMENTALLY DAMAGING PRACTICABLE ALTERNATIVE, in this ROD. See DA special condition #4a-h.

Comment letter dated November 29, 2007.

Issue #1: "...we are concerned that neither Alaska DOT nor the Corps has provided any opportunity to the public to review and analyze the significant new information relating to the environmental

impacts and cost of this project that has arisen over the last year."

Issue #2: "That EIS has significant defects and does not contain sufficient information to assess the extent of the environmental impacts associated with dredging and filling specifically relevant to the Corps' analysis."

Issue #3: "Specifically, Alaska DOT's EIS does not take into account significant geologic hazards identified in a report released to the public in late January 2007. *Golder Assoc., Inc., Final Report, Lynn Canal Highway Phase I Zone 4 Geotechnical Investigations (Dec. 2006).*"

Issue #4: "That EIS has significant defects and does not contain sufficient information to assess the extent of the environmental impacts associated with dredging and filling specifically relevant to the Corps' analysis"

Issue #5: "...ADOT's EIS does not take into account significant geologic hazards identified in a report released to the public in late January 2007."

Issue #6: "The hazards identified in the Golder Report will affect the alignment of the road and its impacts to wetlands and wildlife."

Issue #7: "Alaska DOT recently issued an updated financial plan for the project. See Alaska DOT, *Juneau Access Improvements Financial Plan 2007 Annual Update* (Oct. 2007)." "According to that plan, the proposed project is expected to cost \$374 million, an increase of 37% in less than two years."

Issue #8: "A road through Berners Bay to Sweeny Creek, the portion of the project for which Alaska DOT now has sufficient funding available, does not meet the purpose and need for the project."

Issue #9: "The new information described in the Golder Report affects the analysis of the environmental impacts of the project as well...." And, "Without knowing where the road alignment will ultimately lie, the Corps cannot know how many acres of wetlands will be impacted..."

Issue #10: "The proposed project included development throughout Berners Bay, the primary spawning grounds for Lynn Canal herring. The Corps' decision to allow dredging and filling in that area could affect herring."

Issue #11: "The Corps should require Alaska DOT to provide this significant new information in a new permit application and should assess that information in accordance with NEPA. We request that the Corps issue a new public notice, based on a complete permit application incorporating the new information, providing a fair opportunity for public involvement in assessing the public interest in this permit application."

ADOT RESPONSE TO SEACC: The ADOT responded to SEACC's comment letter, dated November 29, 2007, stating that both the ADOT and the FHWA understood SEACC's concerns, but that the additional and more detailed information prepared for the selected alternative is a normal part of the process, and believes that none of the results merited additional NEPA analysis or further practicability analysis under the Clean Water Act. ADOT's letter addressed the eleven itemized the issues in the SEACC letter as follows, below.

The Golder Report: The report resulted in changes to the proposed road alignment, but would result in less excavation, less excess material, less deep water disposal and no increase in Corps' jurisdictional fills.

The JAP's Financial Plan 2007 Annual Update: The ADOT stated that the SEACC letter "...reflects the mistaken notion that large transportation projects should not be permitted, or initial construction funded, unless the entire cost of the project is immediately available." DOT responded that "...one of the purposes of the Annual update is to provide information as to how the project will be developed over time to match changes in cost and available funding."

The 2007 Petition to List Lynn Canal Distinct Population Segment of Pacific Herring under the Endangered Species Act: The ADOT responded to this issue as follow: "The proposed action would not result in dredged or fill material in Berners Bay, and the alignment for the segment along the east shore of Berners Bay has been designed to be as far from the shoreline as practicable, maintaining a vegetation buffer between the water and the highway... Also, a petition to list a species does not compel any action from a federal agency other than evaluation of the petition by the federal agency with jurisdiction, in this case the National Marine Fisheries Agency."

CORPS RESPONSE TO SEACC'S NOVEMBER 29, 2007, WITH RESPECT TO THE ELEVEN ISSUES ABOVE: The Corps agrees with the ADOT's response to SEACC's concerns. The Endangered Species Act consultation process was completed by FHWA and addressed the concerns raised in the Golder Report. The Corps public notice initiated the Corps consultation under the ESA. The ESA consultation was completed by FHWA as the lead Federal Agency. The Golder report was completed after the Corps Public Notice. According to Corps SOP "if the project impacts are similar to or less than the original submittal the Corps will proceed with a decision with out issuing another Public Notice". In this case ADOT reviewed the Golder document, and determined that the information would change the proposed road alignment, but would result in less excavation, less waste rock, less deep water disposal, and no increase in the Corps' jurisdiction. Under CFR 33 CFR 325.2(a)(2) the District Engineer will issue a revised public notice if in his view there is a change in the application data that would affect the public's review of the proposal. The Golder report did not result in any substantial application data. Therefore, the Corps determined a revised public notice was not warranted. ADOT estimates for the cost of roadway construction continue to rise. The increases are not because of one report or one piece of information. We feel the FEIS

adequately analyzed the impacts of the proposed action and alternatives. Neither the Golder report nor the increased costs changed this conclusion. The time between the SEIS and the Corps ROD has resulted in higher construction costs for all of the alternatives. The escalating costs of steel, concrete, and equipment will elevate the final costs for all alternatives. This rapid inflation of construction costs, equipment, operation, and maintenance will affect all alternatives equally. It was concluded that Modified Alternative 2B was the least environmentally damaging practicable alternative considering cost, existing technology, and logistics in light of the overall project purposes. Logistics and available technology were the deciding factors in this analysis. See III - OVERALL PROJECT PURPOSE, VI - ALTERNATIVES CONSIDERED, and VIII - ANALYSIS OF THE LEAST ENVIRONMENTALLY DAMAGING PRACTICABLE ALTERNATIVE, in this ROD.

Lynn Canal Conservation, Inc. [LCC]⁷⁰. The LCC stated⁷¹ opposition to the proposed project. They stated the issuance of a 404 permit would be "contrary to the public interest because benefits do not outweigh detriments of the project." They further stated that "It is premature for the Corps to issue a permit because most of the project design is still in preliminary stages." LCC explained how the ferry alternatives, compared to the proposed project, would meet or exceed the project purpose and needs for capacity to meet demand, increased travel opportunity, reduced travel times, and reducing state and user costs. LCC also expressed their concern over essential fish habitat, including the 1.4 million cy of waste rock to be disposed of in deep water, public health and safety concerns, and impacts on Stellar sea lions, bald eagles, and wetlands. The LCC concluded that the Corps should deny the requested 404 permit based on the following reasons: "design information is mostly incomplete (including design through a critical habitat for a threatened [ESA] species); there has been no formal ESA consultation with NMFS; impacts to fish and EFH; the detriments of the project far outweigh any real or perceived benefits; the project is not economical; the project would harm the aesthetics of Lynn Canal, a world class visitor destination; the project has significant environmental consequences and Auke Bay marine alternatives have no significant environmental consequences; impacts to fish and wildlife are unnecessary; the project would diminish the safety of the traveling public; the project would compromise routine and emergency healthcare options; and the project is contrary to the public interest."

CORPS RESPONSE TO LCC: The Corps determined that the project as designed could be evaluated. A complete application was supplied to the Corps and a public notice was therefore issued. The NMFS consultation on EFH resulted in an agreement titled "Mitigation Commitments Relevant to Section 404 of the Clean Water Act." All EFH responsibilities were completed by the Corps for this project. ESA coordination and consultation was completed to the satisfaction of the USFWS and NMFS. Modified Alternative 2B resulted in a reduction of the design footprint and in the reduction of waste rock requiring disposal. The Corps determined that the ferry

⁷⁰ See Section IX.2.G. Responses.

⁷¹ LCC Email, dated May 22, 2006.

alternatives were not practicable in light of the overall project purpose. Also, see Corps response to the SEACC comment letters, dated June 12, 2006, and November 29, 2007, and . See III - OVERALL PROJECT PURPOSE, VI - ALTERNATIVES CONSIDERED, and VIII - ANALYSIS OF THE LEAST ENVIRONMENTALLY DAMAGING PRACTICABLE ALTERNATIVE, in this ROD.

Lynn Canal Transportation Project (LCTP)⁷². The LCTP coordinator wrote that their organization, consisting of business people from Haines, and Skagway, was opposed to the project since it was not in the public interest and a better, more economical, alternative existed. They explained that it is in the best interest of the public to preserve and improve the mass transit ferry system and not in the public interest to increase our dependence on the individual automobile. Further, they stated, it is not in the public interest to move away from a popular viable public transportation system, especially with rising fuel prices, and it's "not in the public interest to build a road that the EIS admits is more expensive than the present ferry system." The LCTP concluded that they "commissioned one of the developers who designed the Interisland Ferry Authority (IFA) to see if a similar ferry authority could operate ferry service in the Lynn Canal. Their findings prove that a ferry system can be designed and run on a break even or better basis, using the existing rider ship and fares of the AMHS." LCTP states that they provided the ADOT this information, but the ADOT refused to evaluate it in the EIS for an unknown reason.

The LCTP stated that they found the following economic data flaws in the FEIS:

- Overstates annual cost of the No Action and Marine Alternatives;
- Overstates capital investment in Marine Options;
- Underestimates traffic for Marine Options;
- Does not reflect overall cost savings to travelers and the community;
- Does not reflect potential differential cost;
- Understates cost of highway alternatives;
- Highway operating costs do not reflect all costs; and
- Unknown economic implications on AMHS and State transportation budget when the majority of the AMHS is lost if proposal goes through.

The LCTP also submitted a preliminary business plan, which they submitted to the ADOT earlier that shows a ferry system can be operated in Lynn Canal that "meets traffic demand, provides excellent schedules and service and operates with little or no need for state subsidies." The plan was written by one of the architects for the Interisland Ferry Authority (IFA), a public corporation organized under Alaska's Municipal Port Authority Act in 1997 and based out of Craig, Alaska on Prince of Wales Island.

⁷² Letter addressed to the ADOT, and copy furnished to the Corps, dated June 12, 2006.

The following table shows the current prices and distances for comparable ferry runs between these two ferry systems:

FERRY SYSTEM	PORTS	DISTANCE (MILES)	FARE: 1 ADULT PASSENGER	FARE: <19' VEHICLE
AMHS	JUNEAU-HAINES	80	\$36	\$83
AMHS	JUNEAU-SKAGWAY	97.5	\$48	\$108
IFA	KETCHIKAN-HOLLIS	51	\$37-summer \$30-winter	\$85-summer \$70-winter
IFA	COFF-PETERSBURG ⁷³	58	\$58	\$133

CORPS RESPONSE TO LCTP: All comments were forwarded to ADOT and FHWA. The Corps asked FHWA if the traffic study and cost analysis for alternatives found in the FEIS met all established norms. FHWA assured the Corps that all assumptions for costs and evaluations in the FEIS were based on acceptable standards. Construction costs were based on the costs at the time. No costs were understated or exaggerated. Today the costs of steel, concrete, and fuel have gone up. New cost evaluations will be completed yearly for State projects. In addition, ADOT and FHWA revisited their cost and calculations for Modified Alternative 3. The State found costs were increasing since the FEIS was completed but they found no errors in their assumptions. The costs for all alternatives were increasing as steel, fuel, and concrete costs escalate. The increases affect all alternatives. All dollar evaluations were left in like years for comparison purposes. The State further explained that they are bound by union labor contracts on the ferries which make direct private and government comparisons difficult.

The Corps notes based on the above table, the IFA system is charging slightly higher fares for shorter distances traveled than the AMHS system is charging (as of 2006).

Also, see Corps response to the SEACC comment letters, dated June 12, 2006, and November 29, 2007.

F. INDIVIDUALS

The Corps received 257 comment letters from individuals, private companies, and other organizations in response to the Corps public notice. The comments, sometimes more than one per comment letter, have totals of 87 for and 170 against. Several individuals sent more than one comment letter and 29 responses were form letters with a total of 152 different signatures opposing the project.

CORPS RESPONSE TO INDIVIDUALS: See Corps responses to SEACC June 12, 2006, SEACC November 29, 2007, LCC and LCTP.

X. General Evaluation [33 CFR 320.4(a)]: Public Interest Review

⁷³ This run is from Coffman Cove on POW Island to the ferry terminal on South Mitkof Island and requires a 22-mile bus ride for \$22 to Petersburg for those without a vehicle. This ferry only operates from May to September.

1. **The relative extent of the public and private need for the proposed work.** The public need is for an efficient method of providing an all-weather surface transportation system in Lynn Canal between the communities of Juneau, Haines, and Skagway.
2. **The practicability of using reasonable alternative locations and/or methods to accomplish the objective of the proposed structure or work.** The Corps determined that in light of the 404(b)(1) Guidelines, the overall project purpose as: "to provide improved surface transportation with increased capacity to meet demand, provide flexibility, improved opportunity for travel, and reduced travel time between the Lynn Canal communities of Juneau, Haines, and Skagway." The Corps considered mainline ferries, fast ferries, different ferry dock locations, and a road on the west side with two different ferry connections. All of the alternatives failed to meet one or more of the following criteria: increased capacity to meet demand; provide flexibility; improve the opportunity to travel; or reduce travel time; and therefore were found not practicable. It was found that Modified Alternative 2B was the least environmentally damaging practicable alternative. There are no other reasonable and practicable alternative methods and/or locations that would accomplish the purpose of the proposed action and which would be less damaging to the aquatic environment.
3. **The extent and permanence of the beneficial and/or detrimental effects that the proposed structures or work may have on the public and private uses which the area is suited.**⁷⁴ The proposed road would have a number of permanent benefits, to include providing the capacity to meet traffic demand, reduce travel time, provide flexibility and improve travel between the Lynn Canal communities of Juneau, Haines, and Skagway. The road would also be beneficial by increasing viewing opportunities to see wildlife, marine flora, fauna, and provide additional recreational opportunities.

Detrimental effects would include the increased access to historical, archaeological sites, bald eagle nest sites⁷⁵, and potential impacts to threatened and/or endangered species. Additionally, the project would result in the permanent loss of 95.3 acres of aquatic habitat⁷⁶. The road access would have the potential to be detrimental to subsistence users.

XI. Evaluation of the Discharge of Dredge and Fill Material in Accordance with 404(b)(1) Guidelines:

1. Evaluation of Compliance with the Guidelines, 40 CFR § 230.10 (a)-(d)

(An * is marked above the answer that would indicate noncompliance with the Guidelines. No * marked signifies the question does not relate to compliance or noncompliance with the Guidelines. An "X" simply marks the answer to the question posed.) All chapter, Section, and Appendix references are made to the FEIS, dated January 2006)

⁷⁴ FEIS, Section 4, primarily Chapters 4.1.1 (Land Use and Recreation), 4.1.2 (Visual Resources), 4.1.4 (Socioeconomics), and 4.1.5 (Transportation). Subsistence was not mentioned.

⁷⁵ Approximately 45 bald eagle nesting sites would be indirectly impacted by the road.

⁷⁶ Special aquatic sites, and other waters of the U.S.

(See Section 4.3, for the following items).

a. Alternatives Test.

Preliminary:

Yes No

*

- (i) Are there available, practicable alternatives to the proposed discharge, which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences?

☐ ☒

The No Action Alternative, Alternative 3, Modified Alternative 3, 4A, 4B, 4C and 4D were determined to have failed the Corps' overall project purpose and therefore were not practicable. Modified Alternative 2B was determined to be the least environmentally damaging practicable alternative.

- (ii) The selected practicable alternative involves a discharge into other locations in waters of the United States?

☒ ☐

*

- (iii) If the project is in a special aquatic site and is not water dependent, has the applicant clearly demonstrated that there are no practicable alternative sites available?

☒ ☐

*

b. Special restriction. Will the discharge:

- (i) Violate State water quality standards?
(See also Section 4.3.9.)

☐ ☒

*

- (ii) Violate toxic effluent standards (under Section 307 of the Act)?
(See Section 4.3.9, Appendix K.)

☐ ☒

*

- (iii) Jeopardize endangered or threatened species or their critical habitat?
(See Section 4.3.17, ESA consultation).

☐ ☒

*

- (iv) Violate standards set by the Department of Commerce to protect marine sanctuaries?
Not applicable: there are no marine sanctuaries in the project area. (See Section 4.3.17, Appendixes B, F, N, and S.)

☐ ☒

*

- (v) Evaluation of the information in the FEIS indicates that the proposed discharge material meets testing exclusion criteria for the following reason(s).
(See Section 4.3.9, Appendix K.)

☒ ☐

*

(X) Based on the above information, the material is not a carrier of contaminants.

() The levels of contaminants are substantially similar at the extraction and disposal sites and the discharge is not likely to result in degradation of the disposal site and pollutants will not be transported to less contaminated areas.

() Acceptable constraints are available and will be implemented to reduce contamination to acceptable levels within the disposal site and prevent contaminants from being transported beyond the limits of the disposal site.

c. Other restrictions. Will the discharge contribute to significant degradation of "waters of the United States" through adverse impacts to:

Yes No

*

- (i) Human health or welfare, through pollution of municipal water supplies, fish, shellfish, wildlife and special aquatic sites? (Section Sections 4.3.12, 4.3.13, and 4.3.15.)

☐ ☒

*

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- (ii) *Life stages of aquatic life and other wildlife?* ☐ ☒
(See Section 4.3.15, Appendix N, Q, and S.)
- (iii) *Diversity, productivity and stability of the aquatic life and other wildlife or wildlife habitat or loss of the capacity of wetland to assimilate nutrients, purify water or reduce wave energy? (See Sections 4.3.13 to 4.3.15, Appendix O.)* ☐ ☒
 *
- (iv) *Recreational, aesthetic and economic values?* ☐ ☒
(See Section 4.3.5, Appendix H.)
- d. **Will all appropriate and practicable steps (40 CFR § 230.70-77, Subpart H) be taken to minimize the potential adverse impacts of the discharge on the aquatic ecosystem?** ☒ ☐ *

2. Factual Determinations, 40 CFR § 230.11

The determinations of potential short-term or long-term effects of the proposed discharges of dredged or fill material on the physical, chemical and biological components of the aquatic environment included items a – h, below, in making a finding of compliance or non-compliance.

Subpart C: Potential Impacts on Physical & Chemical Characteristics of the Aquatic Ecosystem; (See §4.3.8.)

Subpart D: Potential Impacts on Biological Characteristics of the Aquatic Ecosystem; (See §4.3.13-4.3.17.2.)

Subpart E: Potential Impacts on Special Aquatic Sites; (See §4.3.12, Appendix O.)

Subpart F: Potential Impacts on Human Use Characteristics. (See Appendix F.)

There is potential for short-term or long-term adverse effects (in light of Subparts C-F, listed above) of the proposed discharge as related to:

	YES	NO
a. Physical substrate determinations (See §4.3.8.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. Water circulation, fluctuation and salinity determinations (See §4.3.9, Appendix K.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. Suspended particulate/turbidity determinations (See §4.3.9.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. Contaminant determinations (See §4.3.11.)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. Aquatic ecosystem structure and function determinations (See §4.3.12.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. Proposed disposal site determination (disposal sites and/or size of mixing zone (See Section 4.3.))	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. Determination of cumulative effects on the aquatic ecosystem. (See Appendix U.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h. Determination of secondary effects on the aquatic ecosystem. (See Appendix U.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>

3. Technical Evaluation Factors, 40 CFR § 230 Subparts C-F**a. Potential Impacts on Physical and Chemical Characteristics of the Aquatic Ecosystem (Subpart C)**

(For the following, refer to Section 4.3.9, and Appendix K.)

	Yes	No	N/A
1. <i>Substrate</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. <i>Suspended particulates/turbidity</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. <i>Water</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. <i>Alteration of current patterns and water circulation</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. <i>Alteration of Normal Water fluctuations/hydroperiod.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

6. *Alteration of salinity gradient* .☐ ☐ ☒**b. Potential Impacts on the Biological Characteristics of the Aquatic Ecosystem** (Subpart D)1. *Threatened and Endangered species* (§230.30) (See Section 4.3.17, and Appendix S.) The NMFS concluded ESA consultation on August 7, 2007, agreeing with the Corps that the proposed action would not adversely affect any endangered and/or threatened species in the project area..☐ ☒ ☐2. *Aquatic Food Web* (§230.31) (See Section 4.3.13, and Appendix N.)☐ ☐ ☒3. *Other wildlife* (See Section 4.3.15).☐ ☐ ☒**c. Potential Impacts on Special Aquatic Sites** (Subpart E)1. *Wetlands* (See Section 4.13.12, Appendix O.)☐ ☒ ☐2. *Sanctuaries and refuges* (See Section 4.3.15 to 4.3.17.2, Appendix S.)☐ ☐ ☒3. *Mud Flats* (See Section 4.3.12-4.3.14, Appendix O.)☐ ☐ ☒4. *Vegetated Shallows* (See Section 4.3.12-4.3.14, Appendix O.)☐ ☐ ☒5. *Coral reefs* (See Section 4.3.12-4.3.14, Appendix O.)☐ ☐ ☒6. *Riffle and pool complexes* (See Section 4.3.12-4.3.14, Appendix O.)☐ ☐ ☒**d. Potential Effects on Human Use Characteristics** (Subpart F)

Description of Social Environment [Base condition]:

1. Effects on municipal and private water supplies (See Section 4.3.9, Appendix K)

☐ ☐ ☒2. Recreational and Commercial fishing impacts (including subsistence fishing)
(See Section 4.3.1.3, Appendix F)☐ ☒ ☐3. Effects on water-related recreation
(See Section 4.3.1.4, Appendix F)☐ ☒ ☐4. Aesthetics
(See Section 4.3.3, Appendix G).☐ ☒ ☐5. Effects on parks, National and historic monuments, National seashores,
wilderness areas, research sites , and similar preserves. (See Section 4.3.4)
The proposed road would be within the Tongass National Forest.☐ ☒ ☐**4. Evaluation of Dredged or Fill Material, Subpart G, 40 CFR § 230.60**

a. The following information has been considered in evaluating the biological availability of possible contaminants in dredged or fill material: (checked boxes apply).

1. ☒ Physical characteristics (receiving waters, bottom sediments, slurry constituents).
(See Section 4.3.8.)
2. ☒ Hydrography in relation to known or anticipated sources of contaminants.
3. ☐ Results from previous testing of the material or similar material in the vicinity of the project.
4. ☐ Known, significant, sources of persistent pesticides from land runoff or percolation.

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5. ☒ Spill records for petroleum products or designated (§311 of CWA) hazardous substances.
6. ☐ Other public records of significant introduction of contaminants from industry, municipalities or other sources.
7. ☐ Known existence of substantial material deposits of substances which could be released in harmful quantities to the aquatic environment by man-induced discharge activities.

b. An evaluation of the information above indicates that there is reason to believe the proposed dredged or fill material is not a carrier of contaminants, or that levels of contaminants are substantively similar at extraction and disposal sites. The material meets the testing exclusion criteria. ☒ Yes ☐ No ☐ Unknown
(See Section 4.3.11.), fill material is not a carrier of contaminants.

c. Is the discharge site adjacent to the extraction site and subject to the same sources of contaminants, or are the materials at the two sites substantially similar? ☒ Yes ☐ No ☐ Unknown
(See Section 4.3.), fill material is similar and not a carrier of contaminants.

d. If there is a high probability that the material proposed for discharge is a carrier of contaminants are there constraints available that are acceptable to the permitting authority, and the Regional Administrator, to reduce potential contamination to acceptable levels at the disposal site? ☐ Yes ☒ No
(See Section 4.3.9, Appendix K.)

V. Disposal Site Determination, 40 CFR §230.11(f)

For the following factors, refer to FEIS, Appendix K, Section 4.3.9. The following factors, as appropriate, have been considered in evaluating the disposal site.

- | | |
|--|-------------------------------------|
| 1. Depth of water at the disposal site | <input checked="" type="checkbox"/> |
| 2. Current velocity, direction, and variability at disposal site | <input checked="" type="checkbox"/> |
| 3. Degree of turbulence | <input checked="" type="checkbox"/> |
| 4. Water column stratification | <input checked="" type="checkbox"/> |
| 5. Discharge vessel speed and direction | <input type="checkbox"/> |
| 6. Rate of discharge | <input checked="" type="checkbox"/> |
| 7. Dredged material characteristics | <input checked="" type="checkbox"/> |
| 8. Other factors affecting rates and patterns of mixing | <input checked="" type="checkbox"/> |

An evaluation of the appropriate factors in V. a. above indicates that the disposal site and/or size of mixing zone is acceptable. ☒ Yes ☐ No

6. Findings of Compliance or Non-compliance, 40 CFR § 230.12

- a. ☐ On the basis of these Guidelines (Subparts C through G), the proposed disposal site for discharge of dredged or fill material complies with the Section 404(b)(1) Guidelines.
- b. ☒ On the basis of these Guidelines (Subparts C through G), the proposed disposal site for the discharge of dredged or fill material complies with the Section 404(b)(1) Guidelines with the inclusion of the appropriate and practicable discharge conditions to minimize pollution or adverse effects to the affected aquatic ecosystem.
- c. ☐ The proposed disposal site for discharge of dredged or fill material does not comply with the Section 404(b)(1) Guidelines for the following reasons:
 1. There is a less damaging practicable alternative ☐
 2. The proposed discharge will result in significant degradation of the aquatic ecosystem ☐
 3. The proposed discharge does not include all practicable and appropriate measures to minimize potential harm to the aquatic ecosystem ☐
 4. There does not exist sufficient information to make a reasonable judgment as to whether the proposed discharge will comply with these Guidelines ☐

7. SUBPART A - GENERAL

Dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that such a discharge will not have an unacceptable adverse impact either individually or in combination with known and/or probable impacts of other activities affecting the ecosystem of concern.

8. SUBPART B - COMPLIANCE WITH THE GUIDELINES

The actions proposed by ADOT for the Project would involve the discharge of fill material into special aquatic sites as well as into other waters of the U.S. in order to develop an open-water marine disposal site, a marine ferry terminal facility, and a highway connecting Juneau to the Katzeihin River area.

Ferry Terminals. The ADOT assumed that the majority of each marine facility would be constructed on fill discharged into marine waters. Upland locations are not available to substitute for the proposed discharge sites (preferred alternative) which would accomplish the project's purpose and need and result in fewer acres of impacts to waters of the U.S.

Construction of the Access Road. The Guidelines state: "Where the activity associated with a discharge which is proposed for a special aquatic site does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose (i.e., is not 'water dependent'), practicable alternatives that do not involve special aquatic sites are presumed to be available, unless clearly demonstrated otherwise. In addition, where a discharge is proposed for a special aquatic site, all practicable alternatives to the proposed discharge which do not involve a discharge into a special aquatic site are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise." ⁷⁷ The applicant has clearly demonstrated that the discharge of dredged and fill material into wetlands (special aquatic site) is the LEDPA considering overall project purpose. Alternative 3, Modified Alternative 3, 4A, 4B, 4C, and 4D, failed to satisfy the overall project purpose. Consequently, Alternative 3, Modified Alternative 3, 4A, 4B, 4C, and 4D, were determined not to be practicable after taking into consideration cost, existing technology, and logistics in light of the overall project purpose. Logistics and available technology were the deciding factors in this analysis. It has been demonstrated that Modified Alternative 2B is the LEDPA in compliance with the 404(b)(1) Guidelines.

9. SUBPART C - POTENTIAL IMPACTS ON PHYSICAL AND CHEMICAL CHARACTERISTICS OF THE AQUATIC ECOSYSTEM

Applicable information about direct, indirect and cumulative environmental impacts of the proposed project⁷⁸ and alternatives related to substrate, suspended particulates/turbidity, water, current patterns and water circulation, and normal water fluctuations, was discussed in Section 4.0 of the FEIS, which considered the resource values for the project. The individual affected resources are discussed in detail in Section 3.0 of the

⁷⁷ 40 CFR Part 230.10(a)(3), Subpart B, Compliance with the Guidelines.

⁷⁸ The proposed project includes components described in the Corps' public notice, dated April 21, 2006.

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FEIS. The FEIS anticipated that adverse impacts to these characteristics would be relatively minor.

Restricting the discharge of waste rock into two or more locations in Lynn Canal (or other contiguous navigable waters such as Chilkoot Inlet) would not result in a hazard to navigation, and would result in minimal impact to U.S. navigable waters. The introduction of unwashed blasted rock into Lynn Canal at any location would result in an increase of total suspended solids, i.e., turbidity, during the discharge⁷⁹. This turbidity would be temporary since the discharge would quickly settle, and not remain in suspension, and therefore, not drift for long distances.

10. SUBPART D - POTENTIAL IMPACTS ON BIOLOGICAL CHARACTERISTICS OF THE AQUATIC ECOSYSTEM

Pertinent information about direct, indirect and cumulative impacts of the proposed project and all of the project's⁸⁰ components and alternatives related to threatened and endangered species, fish, aquatic organisms, and other wildlife was discussed in Chapter 4.0 of the FEIS. The discharge of fill material into waters, of the U.S., including wetlands, in conjunction with the construction of the project's marine dock facilities, highway and material stockpiles would result in an impact to living organisms directly underneath the discharged material. The discharge of fill material for the road construction would not result in major permanent modifications to the area's food web. There would be temporary and permanent impacts to wildlife, such as waterfowl, deer, bear, and small mammals: by burial of the special aquatic sites (e.g., wetlands) within and adjacent to the road alignment and by the direct displacement of wildlife from the habitat.

11. SUBPART E - POTENTIAL IMPACTS ON SPECIAL AQUATIC SITES

Special aquatic sites that would be impacted by the proposed project are palustrine forested wetlands which are typical in Southeast Alaska. There would be approximately 62 acres of this type lost in the project area.

Information about the functions and values associated with the area's wetlands (and other waters of the U.S.) was discussed in the FEIS' Appendix N, Essential Fish Habitat, and Appendix O, Wetlands Technical Report. The impact upon wetlands was discussed in Section 4 of the FEIS, under each of the 2006 FEIS alternatives described in Section VI.A. of this ROD. The FEIS recognizes that large portions of Southeast Alaska are wetlands, and that the wetland types within the project site are not unique to Southeast Alaska. The projected wetland losses have been avoided and minimized. Compensatory in lieu fee mitigation for wetlands losses has been proposed by the agencies and agreed to by the applicant and Corps for unavoidable losses. A special condition will be added to the permit. See DA special condition #4a-h.

12. SUBPART F - POTENTIAL IMPACTS ON HUMAN USE CHARACTERISTICS

Human use characteristics that would be affected by the proposed project include, but would not be limited to, transportation, fisheries, water-related recreation, aesthetics, and recreational areas. Pertinent information about potential impacts of the proposed work on human use characteristics is found in Section 4 of the FEIS and under each of the 2006

⁷⁹ See XI.2.d. in this ROD or in the FEIS, 4.3.11.

⁸⁰ The proposed project includes components described in the Corps' public notice, dated April 21, 2006.

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FEIS alternatives described in Section VI of this ROD. Anticipated impacts, both beneficial and detrimental, ranged from relatively minor impacts to water-related recreation to moderate long-term impacts to aesthetics.

13. SUBPART G - EVALUATION AND TESTING

There is no reason to believe that any of the material to be discharged into waters of the U.S. would be contaminated.

14. SUBPART H - ACTIONS TO MINIMIZE ADVERSE EFFECTS

Actions proposed to minimize potential adverse effects for each available alternative were discussed in Section 2 of the FEIS and under each of the 2006 FEIS alternatives described in Section VI.A. of this ROD. Actions to minimize adverse impacts to waters of the U.S. were identified⁸¹.

The following special conditions would append to the Corps permit. Rationale is included for special conditions:

1. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.

Rationale: This condition is required by the Corps of Engineers, Appendix A to Part 325 Part B Special Conditions, and are intended to ensure free navigation for the public and reduce impacts to the public interest, per [33 CFR 320.4(r) and 33 CFR 320.4(o)(3)]. Note the rationale for conditions 2, and 3 below remains the same.

2. You must install and maintain, at your expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number: Commander (oan), 17th Coast Guard District, P.O. Box 25517, Juneau, Alaska 99802; (907) 463-2269.

3. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

4. In-Lieu-Fee Compensatory Mitigation:

- a. The permittee shall pay the sum of \$440,000 as In-Lieu Fee (ILF) for wetland restoration, enhancement, preservation or land acquisition for the unavoidable adverse impacts to fresh water aquatic resources. This compensatory mitigation amount of \$440,000 is based on June 2006 dollars and shall be adjusted for the rate of inflation to the year in which payment is made to the ILF operator. The method for determining inflation shall be the same as those used by FHWA to determine project costs.

⁸¹ Example: Use of trestle bridges over moderately sized drainages and waterways versus culverts and fill.

b. The permittee shall pay the sum of \$780,000 as an ILF to offset for the loss of 32.0 acres of unavoidable adverse impacts to intertidal and subtidal marine waters (EFH) of the United States. The \$780,000 is compensatory mitigation required under Section 404 of the Clean Water Act. This compensatory mitigation amount of \$780,000 is based on June 2006 dollars and shall be adjusted for the rate of inflation to the year in which payment is made. The method for determining inflation shall be the same as those used by FHWA to determine project costs.

c. Therefore, the total ILF amount required under Section 404 of the Clean Water Act for the Project is found in two parts: (4a: \$440,000) + (4b: \$780,000) = \$1,220,000.

d. Total payment to the ILF operator shall be made for special condition 4a prior to any construction. Construction is defined as ground breaking or land clearing activity with heavy equipment, the placement of fill material in waters of the U.S. or work within waters of the U.S.

e. Payment or fund expenditures for special condition 4b shall be made in accordance with the Essential Fish Habitat mitigation plan, found in the document, "*Mitigation Commitments Relevant to Section 404 of the Clean Water Act*."

f. If project modifications result in a footprint increase in low-value fresh water jurisdictional wetlands, and the footprint increase is less than five acres, an ILF increase is not required. If the jurisdictional low-value wetland fill footprint exceeds 66.9 acres (61.9 + 5.0 = 66.9 acres) for the project, the amount of additional mitigation shall be determined independently, and shall be in addition to the amount in special condition 4a (\$440,000).

g. If project modifications result in a footprint increase impacting marine or high-value jurisdictional habitat areas, the amount of additional mitigation shall be determined independently, and shall be in addition to the amount in special condition 4b (\$780,000).

h. If project modifications are requested by ADOT an approved DA permit shall be in hand prior to placing fill or structures in jurisdictional waters of the U.S. A permit modification is required if the plans vary from those permitted by the DA. Special Conditions 4a through 4g address mitigation requirements not DA permit requirements.

Corps Rationale: A condition on mitigation was recommended by CBJ. This condition shall ensure compliance with our ILF agreements and Corps policy, per 33 CFR 320.4(r) and 40 CFR 230.70 and the new mitigation rule of April 10, 2008. This condition is required to ensure compliance with the permit condition recommended by the U.S. Environmental Protection Agency in their letter of June 12, 2006, to mitigate for impacts to waters of the U.S.

5. All anadromous fish streams will be crossed by bridges. Streams that can be crossed with 130-foot or shorter bridges will not have any structures or fill placed below the ordinary high water mark of the stream channel.

Corps Rationale: This condition was recommended by CBJ. This condition will assure that anadromous stream circulation patterns are preserved to accommodate resident fish movements, per 33 CFR 320.4(r) and 40 CFR 230.74(d).

6. Permittee shall coordinate with the U.S. Fish & Wildlife Service (USFWS) to avoid impacts on eagle nesting trees, in accordance with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Permittee shall also abide by the National Bald Eagle Management Guidelines at <http://www.fws.gov/migratorybirds/baldeagle.htm>.

Corps Rationale: An eagle condition was recommended by CBJ. This condition is required to ensure protection to the bald eagle in compliance with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. This condition was coordinated with the USFWS.

7. No in-water work is permitted between April 15 and June 15 in anadromous waters. Marine water work can only occur if there is a complete tide out event during this window.

Corps Rationale: The condition was recommended by CBJ. This condition is also required to ensure compliance with Alaska Department of Natural Resources' Office of Habitat Management and Permitting's fish habitat permits for the project. This condition ensures that fish movements are not hampered by in water construction, per 33 CFR 320.4(r) and 40 CFR 230.74(d).

8. No fill material shall be side cast into Berners Bay during construction.

Corps Rationale: This condition was a permit condition recommended by CBJ. This condition is required to ensure that the Project would not have adverse effects on the ARNI within the Berners Bay Area. Berners Bay has been designated an ARNI by EPA. This condition is required to ensure that the construction activities do not waste rock into marine waters, per 33 CFR 320.4(r).

9. The Measures to Minimize Harm identified in the April 3, 2006, Federal Highway Administration's Record of Decision for the Project shall be incorporated as elements of the project. If there is any conflict between FHWA's Measures to Minimize Harm and conditions of DA permit, the conditions of the DA permit shall be controlling.

Corps Rationale: This condition is required to ensure compliance with the permit conditions recommended by CBJ. This condition is required to ensure that the construction activities do not waste material into waters of the U.S. per 33 CFR 320.4(r).

10. The permittee will continue to fund the U.S. Fish & Wildlife Service's aerial surveys for a period of five years after all construction is completed to assess the impact, if any, of the project on the Lynn Canal bald eagle population.

Corps Rationale: This condition is recommended by CBJ. This condition is also required to ensure protection to the bald eagle in compliance with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act.

11. Permittee shall construct the proposed bridges for the Antler and Lace Rivers so as to avoid placing fill material in any contiguous wetlands.

Corps Rationale: This condition is required to ensure compliance with the permit condition recommended by the U.S. Environmental Protection Agency in their letter of June 12, 2006, to mitigate for impacts to waters of the U.S.

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The CBJ also had recommendations for this stretch of construction. This condition is required to minimize adverse environmental impacts, per 33 CFR 320.4(r) and 40 CFR 230.74(a).

12. For project segments not yet fully designed, the permittee shall submit to the Corps, for review and approval, detailed plan sheets that reflect the contract plans and specifications for all work involving fill placement in waters of the United States, including wetlands. The submission shall be at least 30 days prior to contract advertisement and at least 90 days prior to initiation of construction, whichever provides a greater review period. "Construction," as used here, is defined as groundbreaking or land-clearing activity with heavy equipment, or the placement of fill material within 50 feet of waters of the United States. Plans sheets and any accompanying specifications shall delineate all fill footprints in waters of the U. S., including wetlands and provide site-specific details on the fill quantities, fill footprints and construction methods (e.g. culvert installation in streams for road crossings) in sufficient detail for permit compliance inspections by the Corps. The permittee shall demonstrate how the Department of the Army permit conditions and authorization has been incorporated into the plans and specifications. Submittals from the applicant, and or approvals from the Corps may be completed in multiple phases.

Corps Rationale: This condition is required to ensure that the project plans and construction methodologies comply with all terms and conditions of the Corps permit, and the work evaluated in the FEIS, per 33 CFR 325.1.

13. The permittee shall notify the Corps, in writing, at least 30 days prior to the proposed construction of any offsite disposal areas associated with this project and shall submit a preliminary jurisdictional determination to the Corps for verification no waters of the U.S., including wetlands are involved. Construction of the new waste sites shall not commence until the Corps has determined in writing, that the disposal sites and methods of disposal do not require additional Corps authorization.

Corps Rationale: This condition is required to ensure compliance with the permit conditions recommended by CBJ on avoiding wetland activities. This condition is required to ensure that the project plans and construction methodologies comply with all terms and conditions of the Corps permit, and the work evaluated in the FEIS, per 33 CFR 325.1.

14. The permittee shall delineate by staking, flagging and/or marking with other observable methods the construction area limits prior to commencing construction in each area. The permittee shall notify the Corps, in writing, a minimum of 14 days before construction in each area, of the date when staking of that area will be available for Corps inspection. The permittee shall arrange for an inspection of the delineated limits with the Corps. The delineated limits shall be maintained throughout construction to prevent equipment encroachment and/or fill material placement beyond the project-authorized footprint.

Corps Rationale: This condition is required to ensure compliance with the permit conditions recommended by CBJ on avoiding unnecessary wetland activities. This condition is required to ensure the construction limits do not exceed the permitted footprint throughout construction, per 33 CFR 320.4(r).

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15. A pre-construction meeting shall be held between the permittee, the Corps, and the prime contractor(s) whose work is subject to this permit, at least 14 days prior to construction activities, placement of fill material, in waters of the U. S., including wetlands. A minimum notice of a ten working days shall be provided to the Corps. The purpose of the meeting shall be to discuss the work authorized under this permit and the environmental mitigation measures required for compliance, in addition to serving as a forum for open discussion on the above, to identify problem areas, and to answer questions that attendees may have. The permittee shall insure that all contractors and workers whose work is subject to this permit are advised of its terms and conditions. All contractors whose work is subject to this permit shall be given a copy of this permit and required to keep a copy on-site.

Corps Rationale: The condition is added to ensure that the contractor(s) working for ADOT&PF are fully informed of all permit terms and conditions and do not exceed the authorized footprint, or encroach into adjacent waters of the U.S. per 40 CFR 230.74(b) 33 CFR 320.4(r) and 33 CFR 326.4.

16. Construction activities in wetland areas shall be kept to a minimum and shall not exceed the clearing limits. Vehicles traversing wetlands shall be confined to the minimum corridor necessary to conduct the work. Heavy equipment operating in wetlands outside the fill footprint shall be operated on mats of sufficient size and material(s) to minimize soil disturbances, and to allow complete removal of the mats without further soil disturbances after construction.

Corps Rationale: This condition is required to ensure compliance with the permit conditions recommended by CBJ on avoiding unnecessary wetland activities. This condition ensures that culverts and bridges are designed to accommodate circulation and fish movements, per 33 CFR 320.4(r) and 40 CFR 230.74(d).

17. 'Certified' seed mixtures shall be used where seeding is required for erosion control and/or revegetation. Seed collection may be made from the surrounding or regional area for revegetation purposes but not for short-term erosion control purposes. The purpose of the use of certified seed mixtures is to ensure that a high standard of pure live seed is utilized, and to avoid or minimize the contamination of the seed mixture with noxious weed and/or weed seed.

Corps Rationale: This condition is required to reduce invasive and weed seeds from encroaching on the project area, and to ensure a cover crop for erosion protection, per 33 CFR 320.4(r) and 40 CFR 230.72(a)(1).

18. All road cut and fill areas, and waste material disposal sites shall be limited to the minimum required to complete the work and shall be properly stabilized concurrently with material placement to prevent sediment-laden runoff from entering natural surface waters.

Corps Rationale: This condition is required to ensure compliance with the permit conditions recommended by CBJ on avoiding unnecessary wetland activities. This condition is added to ensure water quality standards are met outside of the project work site, and that pollutants do not leave the work area, per 33 CFR 320.4(r), 40 CFR 230.76(b), and 40 CFR 230.73(c).

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19. The permittee shall implement and maintain effective erosion and sediment control measures before, during, and after construction. Filled wetland areas shall be aggressively monitored and maintained to prevent erosion and sediment from entering water bodies.

Corps Rationale: This condition is added to ensure water quality standards are met outside of the project work site, and that pollutants do not leave the work area. Juneau is a high rain fall area and aggressive and timely erosion practices are necessary to ensure on-site containment of runoff, per 33 CFR 320.4(r) and 40 CFR 230.73(c).

20. All filled areas in stream corridors shall be treated for revegetation within 30 days of completion of road-stream crossings and within the growing season in which the construction occurs. If construction of a stream crossing is completed after the growing season, the disturbed stream banks shall be stabilized by other means for the winter and revegetation treatments shall occur at the beginning of the following growing season. At the end of one full growing season, live vegetative cover shall be equal to or greater than 25 percent of the surrounding undisturbed live vegetative cover density and 75 percent after three years.

Corps Rationale: The purpose of this stipulation is to minimize erosion and prevent runoff from entering streams. This will confine and reduce suspended particulates/turbidity to the work area where settling, removal and/or treatment can occur, to ensure on site containment of runoff, per 33 CFR 320.4(r) and 40 CFR 230.73(c).

21. Natural wetland drainage and inundation patterns shall be maintained through the incorporation of adequately sized (diameter and length), sloped and spaced culverts and/or bridges. The permittee shall be responsible for annual monitoring, maintenance, and/or repair, and/or replacement of all culverts and bridges for the life of the project to insure that natural wetland drainages and inundation patterns are maintained. Upslope ponding shall be considered an indicator of non-compliance with this condition.

Corps Rationale: This condition is required to ensure that road design does not interfere with stream flow and that water passage is designed to accommodate fluctuating water levels allowing both low and high water flows to pass and maintain circulation patterns, per 33 CFR 320.4(r) and 40 CFR 230.74(d).

22. All culverts and bridges shall be designed, installed, and maintained so they do not interfere with free and unobstructed passage of all life stages of fish (both anadromous and resident) present in the stream under reasonably expected flow levels. In addition, the culverts shall be placed in and aligned with the natural stream channel and hydraulic gradient.

Corps Rationale: This condition ensures that culverts and bridges are designed to accommodate circulation and fish movements, per 33 CFR 320.4(r) and 40 CFR 230.74(d). This allows for fish protection if any resident fish are found in additional streams crossed by the road. All anadromous streams are proposed to be bridged.

23. Gravel and streambed material shall be used in the bottoms of fish-passage culverts.

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Corps Rationale: This condition will assure that roads and channel spanning structures are designed to accommodate circulation and resident fish movements, per 33 CFR 320.4(r) and 40 CFR 230.74(d). All anadromous streams are proposed to be bridged.

24. Temporary fills in wetlands shall be placed on geotextile mats or other suitable materials of sufficient thickness to facilitate the removal of the fill material to the maximum extent practicable when it is no longer needed for construction. No natural earthen material shall be removed from under the geotextile mat when the temporary fill is removed.

Corps Rationale: This condition is required to ensure that the appropriate protective device is used to sufficiently minimize adverse environmental impacts, per 33 CFR 320.4(r) and 40 CFR 230.74(a).

25. All construction in anadromous fish streams shall take place when stream disturbances would have the least impact on anadromous fish species. All in-water anadromous fish stream construction activities shall be coordinated with the Alaska Department of Natural Resources, Habitat Division. Construction work that occurs above the ordinary high water mark area of the stream and does not include in-water construction may be conducted throughout the year.

Corps Rationale: This condition is required to ensure compliance with the permit conditions recommended by CBJ on avoiding unnecessary impacts to fisheries. This condition is required to prevent the indirect or direct loss or damage to wildlife resources, per 33 CFR 320.4 (c) and 33 CFR 320.4(r).

26. In-water work areas, except for stream crossings by construction equipment and pile driving, shall be isolated from flowing waters in all fish bearing streams.

Corps Rationale: This condition is required to ensure compliance with the permit conditions recommended by CBJ on avoiding unnecessary impacts to fisheries. This condition is required to avoid disruptions of spawning or migration and other biologically critical time periods as per 33 CFR 320.4(r) and 40 CFR 230.75(e).

27. Permittee shall work with the communities of Juneau, Haines, and Skagway to develop, to the extent practicable, a beneficial use for the estimated 0.4 million cy of waste rock that would otherwise be discharged into marine waters. The permittee's "Beneficial Use Evaluation" shall include, but is not limited to, the construction of artificial reef habitat in Lynn Canal.

Corps Rationale: This condition is required to reduce the disposal of fill material into waters of the United States. This condition is required to ensure compliance with 40 CFR 230.1, and satisfy the Environmental Protection Agency.

28. During pile driving activities in the Lynn Canal, the Chilkoot Inlet and Berners Bay, a vibratory hammer and/or a reverse rotary drill shall be used to the extent practicable. If impact hammers are needed to drive steel piles, NMFS shall first be provided with a description of why vibratory hammers cannot be used. Driving near-shore pilings shall occur only during periods of low tides when the site is dewatered.

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Corps Rationale: This condition is required to ensure compliance with the Marine Mammal Protection Act, Endangered Species Act, and is required to prevent the indirect or direct loss or damage to wildlife resources as per 33 CFR 320.4 (c) and 33 CFR 320.4(r).

29. Riprap shall be placed along stream banks as necessary to maintain stream bank integrity, and shall in fish bearing streams include the use of bioengineering techniques to improve habitat value of the riprap, such as incorporation of willow stakes or other locally available vegetation.

Corps Rationale: This condition is required to confine erosion to a small area where settling can occur, and to encourage the rapid growth of a cover crop, per 33 CFR 320.4(r) and 40 CFR 230.73(c).

30. A copy of an as-built survey shall be provided to the Corps for all fills (roads, pads, etc) placed in waters of the U.S., including wetlands, as well as culverts and bridges over freshwater streams each year after implementation of the work authorized by this permit, and upon completion of the project, a final as-built survey shall be submitted within one year, or within one month from the date of surveys required for other Federal or state offices, whichever is earlier.

Corps Rationale: This condition is added to ensure that the project plans and construction methodologies comply with all terms and conditions of the Corps permit, per 33 CFR 326.4.

31. All conditions and agreements found in the National Marine Fisheries Service September 27, 2005, Endangered Species Act Section 7 consultation letter shall be followed by ADOT and its contractors.

Corps Rationale: This condition is added to ensure compliance with the Endangered Species Act.

32. The applicant shall supply a yearly update to the Corps of Engineers on mitigation work completed and in lieu payments made according to the *Essential Fish Habitat mitigation plan, found in the document "Mitigation Commitments Relevant to Section 404 of the Clean Water Act."*

Corps Rationale: This condition is also required to ensure compliance with EFH coordination agreement between the FHWA in the FEIS. This will also ensure that EFH mitigation will be completed.

XII. Compliance with Environmental Requirements: The issuance of a permit for the proposed project is in compliance with applicable environmental requirements. The development of the DEIS, SEIS and the FEIS was accomplished in accordance with the National Environmental Policy Act of 1969, as amended. Recommendations of the USFWS prepared pursuant to the Fish and Wildlife Coordination Act of 1958, as amended, have been fully considered in the permit decision. Coordination with the NMFS pursuant to EFH and Section 7 of the Endangered Species Act of 1973, as amended, has been completed. An evaluation of the discharge of dredge and fill material as required by Section 404(b)(1) of the Clean Water Act, 40 CFR 230, has been completed. The discharge complies with the guidelines, with the inclusion of the appropriate and practicable conditions to minimize pollution and the adverse effects to the affected ecosystem. The Alaska Department of Natural Resources has issued a Coastal Zone Management Consistency Determination, and ADEC has issued a Certificate of Reasonable Assurance, with conditions. Both

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of these documents will be incorporated into and become part of the Corps' permit.

XIII. Section 176(c) of the Clean Air Act General Conformity Rule Review.

The proposed project has been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. The project area is located in an air quality attainment area where the State Implementation Plan (SIP) does not contain any transportation control measures. Therefore, conformity procedures do not apply to this project, and a conformity determination is not required per 40 CFR 51.⁸²

XIV. Decision

I find that the issuance of the Corps permit, as described by regulations published in 33 CFR Parts 320 through 330, with the scope of work as described in this document is based on a thorough analysis and evaluation of all issues set forth in this ROD. There are no less environmentally damaging, practicable alternatives available to Alaska Department of Transportation and Public Facilities that will achieve the purposes for which the work is being proposed; the proposed work is deemed to comply with established Federal, State and local laws, regulations, and codes; the issuance of this permit is consistent with National Policy, statutes, and administrative directives; and on balance, issuance of a Corps' permit to ADOT for the proposed work is not contrary to the public interest. As explained above, all practicable means to avoid and/or minimize environmental harm from the selected, permitted alternative has been adopted and required by terms and conditions of this permit.

Kevin J. Wilson
Colonel, Corps of Engineers
District Commander

Date

⁸² FEIS, Air quality, page 4-51